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Federal Register

Thursday
July 3, 1986

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

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: July 11; at 9 am.

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

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.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:
Seattle 206-442-0570
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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Presidential Documents

Title 3—

The President

Proclamation 5507 of July 1, 1986

National Literacy Day, 1986

By the President of the United States of America

A Proclamation

Literacy is not only necessary for making one's way in our complex society but also a necessary skill for citizens who wish to participate fully in our democratic society. A recent study indicates that as many as one in every eight American adults may be "functionally illiterate." In light of the billions of dollars spent on private and public education, this is a disturbing fact.

Shortly after taking office, I created the Adult Literacy Initiative to address the growing urgency of this issue. Since then, we have seen a tremendous outpouring of support from the American people. The number of volunteer literacy tutors has increased dramatically, more public-private partnerships are being forged, and illiteracy has become a key concern at all levels of State and local government. Still, many people who need help in developing literacy skills are unaware of the services available to them. National Literacy Day provides an opportunity to alert every American to this problem and to the resources available to the dedicated men and women who so selflessly devote their energies to helping other people improve their reading and writing skills.

The Congress, by House Joint Resolution 429, has designated July 2, 1986, as "National Literacy Day," and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim July 2, 1986, as National Literacy Day. I invite the Governors of every State, local officials, and all Americans to observe this day with appropriate activities that show our support for efforts to help make new opportunities available to people who wish to improve their proficiency in reading and writing the English language.

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

Ronald Reagan

[FR Doc. 86-15201
Filed 7-1-86; 3:51 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5508 of July 1, 1986

Minority Enterprise Development Week, 1986

By the President of the United States of America

A Proclamation

America is a land of expanding economic opportunity in which each and every person can play a part based on talent and initiative. The openness and flexibility of our free market economy makes it unique among the countries of the world.

The spirit of our democracy affirms that unhindered opportunity for all Americans is essential to our economic well-being. That our citizens should be judged on the content of their character and be able to advance according to merit and achievement is an economic as well as a moral imperative.

To remain the leader in bringing new products and services to the marketplace, and to successfully compete with products made abroad, we must do everything in our power to continue providing the widest possible economic opportunity for all Americans. We must also continue expanding opportunities to ensure strong growth for minority businesses. These businesses are adding jobs to industries that only a few years ago barely existed. The many contributions made by these companies will help generate the managerial and technological developments and the skilled and experienced work force necessary to strengthen and build the American economy in an era of vigorous international competition.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week of October 5 through October 11, 1986, as Minority Enterprise Development Week, and I call upon all Americans to join together with minority business enterprises across the country in appropriate observances.

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

Ronald Reagan

[FR Doc. 86-15202
Filed 7-1-86; 3:52 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12561 of July 1, 1986

Delegating Certain Functions of the President Relating to Federal Civilian Employee and Contractor Travel Expenses

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 102(a) of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (Public Law 99–234) ("the Act") and Section 301 of Title 3 of the United States Code, it is ordered as follows:

Section 1. Section 1 of Executive Order No. 10621 of July 1, 1955, as amended, is further amended by redesignating the current subsection (i) as subsection (g); by revoking the current subsection (o); and by adding the following new subsection (h):

"(h) The authority vested in the President by Section 102(a) of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985, 5 U.S.C. 5702(a), to establish maximum rates of per diem allowances and reimbursements for the actual and necessary expenses of official travel for employees of the Government to the extent that such authority pertains to travel status in localities in Alaska, Hawaii, the Commonwealth of Puerto Rico, and possessions of the United States."

Sec. 2. There is hereby delegated to the Secretary of State the authority vested in the President by Section 102(a) of the Act (5 U.S.C. 5702(a)) to establish maximum rates of per diem allowances and reimbursements for the actual and necessary expenses of official travel for employees of the Government to the extent that such authority pertains to travel status in localities (including the Trust Territories of the Pacific Islands) in any area situated outside the United States, the Commonwealth of Puerto Rico, and the possessions of the United States.

Sec. 3. Executive Order No. 11294 of August 4, 1966, is revoked.

Ronald Reagan

THE WHITE HOUSE,
July 1, 1986.

[FR Doc. 86–15260
Filed 7–2–86; 11:10 am]
Billing code 3195–01–M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1901

Sale of Rural Housing Insurance Fund Loans to the Public

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation which provides for the sale of Certificates of Beneficial Ownership. This action is needed to comply with section 3006 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272). The intended effect of this action is to finance rural housing loan programs with loan sales to the public rather than to the Federal Financing Bank.

EFFECTIVE DATE: July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Vern Isenberg, Assistant to the Assistant Administrator for Planning, Budgeting, and Finance, telephone (202) 447–6090, Farmers Home Administration, U.S. Department of Agriculture, Room 5026, South Agriculture Building, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor because it 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 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.

Discussion of Final Rule: FmHA is implementing this final rule immediately. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is published as a final rule on an emergency because the Consolidated Omnibus Budget Reconciliation Act requires these regulations to be implemented within 90 days of enactment of the Act. Therefore, to meet this legislative requirement, it is necessary to publish these regulations as a final rule.

Furthermore, pursuant to the Administrative Procedure Act 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this action are impracticable; and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

For reasons set forth in the Final Rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this activity is not subject to intergovernmental consultations with State and local officials.

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

Discussion of Action: The Farmers Home Administration has funded the Rural Housing Insurance Fund by the sale of loans in the form of Certificates of Beneficial Ownership (CBO) to the Federal Financing Bank. Section 3006 of the Consolidated Omnibus Budget Reconciliation Act requires loans to be sold to the public and prohibits sales to the Federal Financing Bank except for servicing current CBO's held by the Federal Financing Bank. These provisions apply to loans made after the date of enactment which was April 7, 1986, therefore, FmHA is revising its regulations to permit CBOs to be sold to the public. Dates and amounts of sales will be announced from time to time as loans become available for sale.

The Catalog of Federal Domestic Assistance title and numbers are:

No.	Program title
10.405	Farm Labor Housing Loans and Grants.
10.410	Low Income Housing Loans.
10.411	Rural Housing Site Loans.
10.415	Rural Rental Housing Loans.
10.417	Very Low-Income Housing Repair Loans and Grants.

List of Subjects in 7 CFR Part 1901

Finance, Loan programs—Agriculture, Loan programs—Housing and community development, Rural areas.

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

PART 1901—PROGRAM-RELATED INSTRUCTIONS

1. The authority citation for Part 1901 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 2 CFR 2.70.

Subpart K—Certificates of Beneficial Ownership and Insured Notes

2. Section 1901.502 is revised to read as follows:

§ 1901.502 Policy.

It is the current policy to sell all certificates of beneficial ownership to the Federal Financing Bank for financing activities from the Agricultural Credit Insurance Fund and the Rural Development Insurance Fund. Sales from the Rural Housing Insurance Fund will be made to the Federal Financing Bank to the extent necessary to service certificates of beneficial ownership held by the Federal Financing Bank. Sales in excess of those needed for servicing requirements will be made to the public. In addition to sales, this subpart provides policy for the servicing of outstanding certificates of beneficial ownership, insurance contracts, and insured notes held by investors.

Dated: June 18, 1986.
Vance L. Clark,
Administrator, Farmers Home Administration.
[FR Doc. 86-15178 Filed 7-2-86; 8:45 am]
BILLING CODE 3410-07-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 346

Foreign Banks

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on foreign banks that appeared at page 11142 in the Federal Register of Tuesday, March 19, 1985 (50 FR 11142). This action is necessary to reinstate the last two sentences of section 346.20(a) which were inadvertently omitted in the March 19, 1985 issue.

FOR FURTHER INFORMATION CONTACT: Joseph Duffy, Senior Financial Analyst, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, at (202) 898-6821

Accordingly the Federal Deposit Insurance Corporation is correctly revising 12 CFR 346.20(a) to read as follows:

§ 346.20 Capital equivalency ledger account.

(a) The branch shall maintain on a daily basis a capital equivalency ledger acount, a liability account, which is equivalent at a minimum to six percent of the preceding quarter's average book value of the liabilities of the branch, exclusive of liabilities due to the parent bank or any other branch, agency, office, or wholly owned subsidiary of the parent bank, *Provided*, the FDIC may, by order, impose a computation of total liabilities on a daily basis in those instances where it is found to be necessary for supervisory purposes. Only amounts due to the parent bank or its branches or agencies may be included in the account. The Board of Directors may require that the account be maintained at a higher level if the financial condition of the branch warrants such action; however, unless otherwise stated, conditions in orders issued prior to January 22, 1985 and granting deposit insurance which mandate more substantial asset maintenance requirements are superseded by this regulation.

* * * * *

Dated: June 26, 1986.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 86-15094 Filed 7-2-86; 8:45 am]
BILLING CODE 6714-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 302

[Docket No. 60219-6019]

Public Works and Development Facilities Program; Designation of Areas

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule.

SUMMARY: This rule amends EDA's regulations at 13 CFR 302.7 entitled "Designation of public works impact program areas" to delete the requirement of submission of an acceptable Overall Economic Development Program (OEDP), since under the Public Works and Economic Development Act of 1965, as amended, Pub. L. 89-136; 42 U.S.C. 3121 *et seq.* (PWEDA), EDA's authorizing statute, Public Works Impact Program (PWIP) projects need not meet OEDP requirements. In addition, this regulation is changed to provide that in order to be designated under this Section, sufficient data establishing eligibility for designation must be available and must be specific to the area proposed for designation.

DATES: Effective Date: July 3, 1986.
Comments by: September 2, 1986.

ADDRESS: Send comments to James F. Marten, Deputy Chief Counsel, Operations and Administration, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7009, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: James F. Marten, Deputy Chief Counsel for Operations and Administration, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7009, Washington, DC 20230, (202) 377-5441.

SUPPLEMENTARY INFORMATION: EDA is amending 13 CFR Part 302, "Designation of Areas", at § 302.7—"Designation of public works impact program areas" at paragraph (a)(4), in two respects.

The amendment exempts PWIP areas from the requirements of 13 CFR 302.5(e). This change is necessary to reflect the language in PWEDA at section 401(a)(6) providing that PWIP areas need not meet OEDP requirements.

In addition, this amendment summarizes and interprets language in PWEDA at section 401(a), to provide that PWIP areas can be designated regardless of boundary constraints, however, there must be sufficient data available for the proposed area to establish the area's eligibility for designation.

Since EDA's regulations at 13 CFR 302.20(a) (3) and (4) limit designations to areas with defined boundaries, it is necessary to exclude PWIPs designated under 13 CFR 302.7 from the requirements at 13 CFR 302.20(a) (3) and (4). Requirements at 13 CFR 302.20(a) (1) and (2) as stated therein do not apply to designations under 13 CFR 302.7.

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of Section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

This rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date, because it relates to public property, loans grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act (APA) and all other relevant laws.

However, because the Department is interested in receiving comments from those who will benefit from the

amendment, this rule is being issued as interim final. Public comments on the interim final rule are invited and should be sent to the address listed in the "ADDRESS" Section above.

Comments received by September 2, 1986 will be considered in promulgating a final rule.

Since notice and an oppportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under section 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 13 CFR Part 302

Community development.

Accordingly, for the reasons set forth above, 13 CFR Part 302 is amended as follows:

PART 302—[AMENDED]

1. The authority citation for Part 302 is revised to read as follows:

Authority: Sec. 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); Sec. 1-105, DOC Organization Order 10-4, as amended (40 FR 56702, as amended).

2. 13 CFR Part 302 is amended by revising § 302.7, paragraph (a)(4) to read as follows:

§ 302.7 Designation of public works impact program areas.

(a) * * *

(4) An actual or threatened abrupt rise of unemployment due to the closing or curtailment of a major source of employment. The area must meet the qualifications as set forth in § 302.5 except those in subsection (e). Although no boundary constraints, as set forth in § 302.20(a), shall apply, the area for which designation is sought must be one for which EDA can obtain data establishing its eligibility for designation.

* * * * *

Dated: June 27, 1986.

Orson G. Swindle, III

Assistant Secretary for Economic Development.

[FR Doc. 86-15105 Filed 7-2-86; 8:45 am]

BILLING CODE 3510-24-M

13 CFR Part 309

[Docket No. 60108-6008]

General Requirements for Financial Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule.

SUMMARY: This rule amends EDA's regulations at 13 CFR 309.7—"Employment of expediters or administrative employees" by conforming language at paragraph (c) thereof to Pub. L. 99-180, December 13, 1985, to state that fees for services of attorneys and consultants in preparing applications for EDA financial assistance cannot be funded under Pub. L. 99-180; however, attorneys' and consultants' fees used to meet grant requirements, such as for example, conducting a title search or preparing plans and specifications, could be paid for out of funds appropriated or otherwise made available under Pub. L. 99-180.

DATES: Effective Date: July 3, 1986.
Comments by: September 2, 1986.

ADDRESS: Send comments to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7800-B, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: James F. Marten, Deputy Chief Counsel for Operations and Administration, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7009, Washington, DC 20230, (202) 377-5441.

SUPPLEMENTARY INFORMATION: EDA is amending 13 CFR Part 309, "General Requirements for Financial Assistance" § 309.7 "Employment of Expediters or administrative employees" to conform to language in Pub. L. 99-180, December 13, 1985, where it is stated:

. . . Provided further, that none of the funds appropriated or otherwise made available under this heading may be used directly or indirectly for attorneys' or consultants' fees in connection with security grants and contracts made by the Economic Development Administration.

Language will be added to 13 CFR 309.7 at paragraph (c) to incorporate the above cited language from Pub. L. 99-180, and to define the phrase "in connection with securing grants and contracts", as attorneys' and consultants' fees for preparing applications for EDA assistance; however, attorneys' and consultants' fees for meeting grant requirements, e.g. conducting a title search or preparing plans and specifications, could be eligible project costs and funded from funds appropriated or otherwise made available under Pub. L. 99-180.

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of Section 1 of the order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

This rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date, because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act and all other relevant laws.

However, because the Department is interested in receiving comments from those who will benefit from the amendment, this rule is being issued as interim final. Public comments on the interim rule are invited and should be sent to the address listed in the "ADDRESS" Section above.

Comments received by September 2, 1986 will be considered in promulgating a final rule.

Since notice and an opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96–511).

List of Subjects in 13 CFR Part 309

Community development, Grant programs—community development, Loan programs—community development, Penalties.

Accordingly, for the reasons set forth above, 13 CFR Part 309 is revised to read as follows:

PART 309—[AMENDED]

1. The authority citation for Part 309 is revised to read as follows:

Authority: Sec. 701, Pub. L. 89–136, 79 Stat. 570 (42 U.S.C. 3211); Sec. 1–105, DOC Organization Order 10–4, as amended (40 FR 56702, as amended).

2. 13 CFR 309.7 is amended by revising paragraph (c) introductory text as follows:

§ 309.7 Employment of expediters or administrative employees; compensation of persons engaged by or on behalf of applicants.

* * * * *

(c) EDA will participate in such costs of facilities receiving financial assistance under the Act as are deemed to be reasonable as fees or compensation for services actually rendered by persons engaged by or on behalf of the EDA applicant for the purpose of rendering professional or other services necessary, as determined by EDA in connection with such facilities or with the extension of financial assistance by EDA. Provided that, no funds appropriated or otherwise made available under Pub. L. 99–180, December 13, 1985, may be used directly or indirectly for attorneys' or consultants' fees in connection with securing grants and contracts made by EDA, such as for example, preparing applications for EDA financial assistance; however; attorneys' and consultants' fees for meeting grant requirements, such as for example, conducting a title search or preparing plans and specifications, could be eligible project costs and paid for out of funds appropriated or otherwise made available under Pub. L. 99–180. No fee or compensation will be allowed if it appears that the person charging such fee or compensation has:

* * * * *

Dated: June 27, 1986.

Orson G. Swindle III,

Assistant Secretary for Economic Development.

[FR Doc. 86–15102 Filed 7–2–86; 8:45 am]

BILLING CODE 3510–24–M

FEDERAL TRADE COMMISSION

16 CFR Part 444

Trade Regulation Rule; Credit Practices Granted to Wisconsin

AGENCY: Federal Trade Commission.

ACTION: Exemption from Trade Regulation.

SUMMARY: The Federal Trade Commission hereby publishes its decision to grant the State of Wisconsin an exemption from the Commission's trade regulation rule on credit practices, 16 CFR Part 444 (1984) ("Credit Practices Rule" or "Rule") as to transactions subject to the Wisconsin Consumer Act.

EFFECTIVE DATE: July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Sandra M. Wilmore or Ruth R. Amberg, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 724–1100 or (202) 724–1187.

SUPPLEMENTARY INFORMATION:

List of Subjects in 16 CFR Part 444

Consumer credit, Trade practices.

The Credit Practices Rule states that it is unfair for a creditor in a transaction subject to the Rule [1] to include in a contract a provision that constitutes or contains a confession of judgment or similar waiver; a waiver of exemptions; an assignment of wages (with certain limited exceptions); or a non-purchase money security interest in certain types of household goods. The Rule also states that it is deceptive for a creditor to misrepresent a cosigner's liability and unfair for a creditor to fail to disclose the cosigner's liability. The Rule requires that a particular notice be provided to potential cosigners and states that a creditor complying with that disclosure provision does not violate the prohibition against unfair and deceptive statements concerning the cosigner's liability. The Rule states that it is an unfair practice for a creditor to assess multiple late fees when only delinquency is the failure to pay a previously assessed late fee.

The Credit Practices Rule provides (16 CFR 444.5) that if a state applies for an exemption from a provision of the Rule, such exemption will be granted if the Commission determines that: (1) There is in effect a state requirement or prohibition that applies to any transaction to which a provision of the Credit Practices Rule applies; and (2) the state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the Rule's provision. Such an exemption will continue for so long as the state effectively administers and enforces its law. The result of the exemption is that the exempted provision of the Credit Practices Rule is not in effect in that state.

The State of Wisconsin has filed a petition for exemption from the Rule, asserting that the Wisconsin Consumer Act ("the Act") and the State enforcement scheme for that Act meet the standards for exemption contained in the Rule. The request was published in the **Federal Register** for 60 days of public comment.[2]

After evaluating the request and the comments received, the Commission has determined to grant the exemption as to most transactions, but to deny the exemption as to transactions that would not be covered by the Wisconsin Act because they involve more than $25,000.

As set forth in § 444.5, the Commission evaluated, in the context of an exemption proceeding, the Wisconsin petition for exemption to determine whether the level of protection to consumers under the state law is substantially equivalent to the Credit Practices Rule and whether the state law is administered and enforced effectively. The exemption proceeding was conducted pursuant to § 1.16 of the Commission's Rules of Practice.

As indicated in the Rule's Statement of Basis and Purpose, the requirement in § 444.5 that a comparable state requirement be "substantially equivalent" to the Commission's Rule provision does not, in the Commission's view require that the state requirement mirror exactly the Commission provision. Any differences that exist, however, should be so minor as not to deprive consumers of the level of protection guaranteed by the Commission Rule nor to complicate significantly compliance by interstate creditors. In determining whether an exemption is warranted, the Commission also considered factors such as the resources committed by the state to enforce its provisions and the extent of private rights of action

[1] The Federal Trade Commission does not have jurisdiction over banks or federally-chartered or insured savings and loan associations, so transactions by those creditors are not subject to the Rule. However, the Federal Reserve Board and the Federal Home Loan Bank Board have adopted substantially similar rules for those institutions. These rules became effective January 1, 1986. The FRB's rule and the FHLBB's rule may be found at 50 FR 11695 (April 29, 1985) and 50 FR 19325 (May 8, 1985), respectively. The State of Wisconsin has requested an exemption from those rules as well.

[2] 50 FR 46082, November 6, 1985.

available to aggrieved consumers, 49 FR 7740, 7783.

Contents of the Wisconsin Submission

Wisconsin provided a copy of the relevant state statutes and a narrative statement comparing the state law with the corresponding provisions of the Credit Practices Rule. The statement also explains how state law and the Rule would apply to the same transaction. The Annual Reports of the Banking Commission for each of the past three years were also provided. They contain summaries of cases brought under the Wisconsin Consumer Act and show what the Banking Commission has done to enforce the Wisconsin Consumer Act during the last three years. The petition is signed by the Commissioner of Banking, who is the Administrator of the Wisconsin Consumer Act.

Comments: Comments were received from the Governor of Wisconsin, the Attorney General of Wisconsin, and the Wisconsin Banking Commissioner. No comments were received from the credit industry or consumers.

Governor Anthony S. Earl stated that the "remedies and penalties available both to the State and to consumers under the Wisconsin Consumer Act are considerably broader and offer more alternative mechanisms for enforcement of the Act than are available under the Rule." He also stated that resources available to enforce the Wisconsin Act exceed "the resources which the federal government could reasonably commit toward the enforcement of the Rule in a single state."

The Attorney General stated that he concurred with the Banking Commission's legal analysis of the Wisconsin Consumer Act as described in the submission and agrees with the conclusion that the Wisconsin Act affords a level of protection that is substantially equivalent to, or greater than, that of the Rule. The Attorney General stated his intention to continue working with the banking Commission to enforce the Wisconsin Consumer Act.

Banking Commissioner Richard C. Galecki responded in his comments to issues raised in the Commission's Federal Register Notice. The Notice referred to the fact that the Wisconsin Act does not cover transactions in which the amount financed exceeds $25,000. He mentions that a separate act prohibits the pyramiding of late charges in first mortgage loans regardless of the loan amount.[3] With respect to enforcement, he explains that the absence of complaints regarding the contract provisions covered by the rule is due to the fact that Wisconsin officials review most consumer contract forms before they are used and potential violations are identified at that point.

With regard to specific provisions, he states that, not only is a confession of judgment unenforceable in Wisconsin, but the contract containing it would be void in its entirety. He states that Wisconsin's confession of judgment provision, as well as its late fee provision, offers broader protection than does the Rule and that the cosigner provision offers equivalent protection by giving the cosigner the right to a free copy of all relevant documents as well as the cosigner notice required by state law.

The Wisconsin Consumer Act and the Rule

A. General

1. Coverage

Sections 421.301(10), (20), and (30) of the Wisconsin Consumer Act provide that an extension of consumer credit to which the Wisconsin Consumer Act applies includes any sale, lease, or loan with a consumer on which a finance charge is or may be assessed, or which is payable in more than four installments. The Rule applies to an agreement between a consumer and a lender or retail installment seller. The Rule's definition of a retail installment seller includes a person who sells goods or services to a consumer pursuant to a lease-purchase arrangement. The Rule defines a debt as money that is due or alleged to be due from one to another and does not require that a covered obligation be subject to a finance charge or payable in more than four installments.

The Wisconsin Consumer Act covers agricultural credit, as well as credit for personal, family, or household use and applies only to transactions in which the amount financed does not exceed $25,000. The Rule covers credit for personal, family, or household use and sets no dollar limit on covered transactions. (See section 421.202(6), WIS. STAT.) The Commission has determined that to apply the dollar limit contained in the Wisconsin Act would exclude significant consumer transactions that now have the protection of the Rule, and that such transactions should continue to be covered. Though the coverage of Agricultural Credit means that some transactions not covered by the Rule are covered by the Act, the Commission finds that this does not compensate for the exclusion of consumer transactions from the protections of the Rule.

2. Enforcement

The Wisconsin Consumer Act is administered by the Commissioner of Banking. Among his functions, the Commissioner is authorized to receive and act on complaints, adopt administrative rules, review and approve contract forms, and commence actions through the Department of Justice. Administration of the Act includes the direct examination of certain creditors by a field staff of five examiners. In addition, there are two consumer credit examiners who handle complaints received against creditors not subject to routine examinations.

From March 1, 1981 to February 28, 1982, according to its annual report, the Wisconsin Banking Commission reviewed 546 complaints under the Wisconsin Consumer Act of which one pertained to the taking of a security interest in exempt property. Others did not appear to pertain to practices covered by the Rule. During that time period, the Wisconsin Banking Commission received 112 additional complaints pertaining to practices not covered by the Wisconsin Consumer Act. According to the summaries provided in the annual report, the practices complained of do not appear to be covered by the Rule either. During that same time period, the state completed seven enforcement actions involving alleged violations of the Act. Three of the seven charged the creditor with the assessment of excessive delinquency charges, but it is not clear from the summaries provided whether the excessive charges included the pyramiding of late charges, a practice prohibited by the Rule. The remaining four enforcement actions did not appear to involve practices that would violate the Rule.

From March 1, 1982 to February 28, 1983, the Wisconsin Banking Commission received 393 complaints of violations of the Wisconsin Consumer Act including one complaint involving the use of a prohibited confession of judgment, a practice that would violate the Rule. Four other complaints involved excessive delinquency charges which, if the excessive charges included the pyramiding of late fees, would violate the Rule. The Wisconsin Banking Commission also received 105 complaints of practices not covered by the Wisconsin Consumer Act that do not appear to be covered by the Rule either. Enforcement proceedings brought under the Act during that time period included three completed cases, two of which

[3] See section 138.052, Wis. Stats. However, the Rule does not apply to the first lien real estate mortgage loans cover by this provision.

alleged contracting for delinquency charges in excess of that permitted by the statute. Again, if the excessive charges included the pyramiding of late fees, that would also violate the Rule. Other practices alleged were not covered by the Rule.

From March 1, 1983 to February 29, 1984, the Wisconsin Banking Commission processed 364 complaints to violations of the Act of which one involved the failure to provide the required notice to a cosigner, a practice that would also violate the Rule. Seven other complaints involved excessive delinquency charges. The Banking Commission received 171 complaints regarding practices not covered by the Act. The practices complained of do not appear to be covered by the Rule. Enforcement proceedings brought during that time period included two completed cases, neither of which appeared to involve practices covered by the Rule. The state also had four cases pending during that time period, two of which included allegations of contracting for excessive delinquency charges, a practice that would violate the Rule if those charges included the pyramiding of late fees.

The Wisconsin Banking Commissioner has the authority to adopt administrative rules to carry out the purposes of the Act, and has done so. Rules under the Wisconsin Act that are relevant to the Credit Practices Rule are: a rule describing language to be used in making an assignment of wages revocable;[4] a rule stating that a purchase money security interest may cover repairs and replacement parts for the item purchased;[5] and rules modifying the notice given to obligors.[6]

To assist creditors in designing forms that comply with the Act, the Wisconsin Banking Commissioner reviews forms used in consumer credit transactions. From the time that the Wisconsin Consumer Act became effective through the time covered by the 1984 report that we received, 780 business and trade associations had submitted forms for approval. Approval of a form or procedure by the Banking Commission protects a creditor from potential civil penalties. The Wisconsin petition asserts that this examination and approval procedure results in a high level of compliance with the Act.

The information provided about Wisconsin's enforcement scheme caused the Commission to conclude that the State of Wisconsin is effectively administering and enforcing its laws.

3. Remedies

The damages provided for individual violations of the Wisconsin law are generally either $100, twice the finance charge, or the amount of the consumer's actual damages.[7] Furthermore, under specific provisions of the Act discussed below, certain nonconforming obligations are void or unenforceable. In addition to the private right of action under the Act, the State may recover civil penalties of $100 to $1,000 for negligent violations of the Act, and penalties of $1,000 to $10,000 for willful and knowing violations. Either the State or an aggrieved consumer may sue for an injunction or declaratory relief. Either the State or any consumer affected by a violation may bring a class action on behalf of all persons similarly situated for actual damages, penalty damages not to exceed $100,000, reasonable attorney's fees, and other relief to which consumers are entitled under specific provisions of the Act.

The Rule provides for civil penalties of up to $10,000 per violation. However, the Rule does not make a nonconforming obligation void or unenforceable by the creditor and contains no private right of action. The Commission has concluded that the private right of action under the Act coupled with the fact that the Act bars a creditor from enforcing certain violative contracts provides consumers with a substantially equivalent level of protection despite the lower civil penalties that can be obtained for violations under the Act.

B. Confession of Judgment

Section 422.405 of the Wisconsin Act provides that a creditor may not obtain from a consumer any authorization that would enable the creditor to confess judgment on behalf of the consumer. If a contract contains such a prohibited provision, the consumer may void the contract, may retain the goods or services provided without any further obligation to pay, and may obtain a refund of all monies paid to the creditor. The Rule prohibits a creditor from taking or receiving a Confession of Judgment, but does not void contracts containing Confessions of Judgment or provide for the other remedies of the Act. With respect to Confessions of Judgment, the Commission has concluded that the prohibited practice appears to be the same and that remedies for violations provided under the Wisconsin Act appear to afford protection at least as great as that of the Rule.

C. Waiver of Exemptions

Wisconsin law exempts certain real and personal property and a portion of a debtor's wages from execution. (See Sections 421.06, 425.06, and 425.107(1)(e), WIS. STAT.) Wisconsin law also provides that it is an unconscionable practice to include in a contract a provision that requires the consumer to waive legal rights. (See sec. 421.106 (1), Wis. Stats.) The state contends that it would be unconscionable for a creditor to include in its contract a waiver of exemptions clause, but waivers of exemptions are not expressly prohibited under Wisconsin law as they are under the Rule. An unconscionable contract provision is not enforceable in Wisconsin, and a creditor who includes such a provision in contract is, furthermore, subject to penalty damages of $100 and any actual damages sustained by the consumer.

The Commission has concluded that a reasonable reading of the Wisconsin Act's prohibition aganist the inclusion of waivers of legal rights would include a prohibition against waiving exemptions granted by state law. As noted in the Rule's Statement of Basis and Purpose, at common law, all property of a judgment debtor was subject to execution in order to satisfy a judgment debt. The ability to retain certain possessions determined to be necessities is a specific right granted to consumers by statute in most states and the District of Columbia.[8] That being the case, the Act prohibits the same practice that the Rule prohibits. The Commission has also concluded that because the Wisconsin law would render such a contract provision unenforceable and provide the consumer with the right to sue for damages, it provides remedies that afford greater protection than that of the Rule.

D. Wage Assignments

Section 422.404 of the Wisconsin Consumer Act prohibits wage assignments unless revocable, and requires that a consumer be given notice of the assignment's revocability. The Rule prohibits wage assignments unless revocable, but does not require a notice of revocability. The Wisconsin Banking Commission states in its petition that, while Wisconsin law does not expressly address payroll deductions, such a

[4] Wisconsin Administrative Code, Bkg. 80.361.

[5] Wisconsin Administrative Code, Bkg. 80.391.

[6] Wisconsin Administrative Code, Bkg. 80.35, 80.341.

[7] The specific remedies available to a consumer for violations of the Wisconsin law provisions that correspond to the provisions of the Rule are discussed in the provision-by-provision analysis below.

[8] Statement of Basis and Purpose, 49 FR 7740, 7768.

payment mechanism would be permissible only if the consumer could revoke it at any time. The Rule permits certain payroll deductions, whether or not they are revocable. The state contends in its submission that the Wisconsin provision on wage assignments offers greater protection than the Rule does. A creditor who violates the Wisconsin provision must pay damages of twice the finance charge or the consumer's actual damage, whichever is greater, in a private suit.

With respect to wage assignments, the Wisconsin Act prohibits the practice prohibited by the Rule, imposes additional requirements such as the notice of revocability, which is not required by the Rule, and provides for damages to a consumer injured by the practice, which the Rule does not. The Commission concludes that, taken together, the wage assignment provisions of the Wisconsin Act afford greater protection than that of the Rule.

E. Household Goods Security Interests

Section 422.417 of the Wisconsin Act provides that, in general, a seller may take only a purchase money security interest. If the extension of credit is in the amount of $500 or more, a seller may take a security interest in goods upon which the property sold is installed or to which it is amended. The creditor may also take a security interest in goods upon which any services that are the subject of the sale are performed. A lender that is not a seller may take a non-purchase money security interest, except in household goods as defined by Wisconsin law.

The Rule prohibits the taking of a non-purchase money security interest in certain household items. The list of items that may not be taken as security in Wisconsin is somewhat different from the Rule's definition of household goods. The Wisconsin Act prohibits taking security interest in particular items of furniture and appliances: A dining table with chairs, beds, a couch and chairs, a refrigerator, a heating stove and a cooking stove. The Rule uses the general terms furniture and appliances, which would include those items. The Rule also specifically protects one television and china, items not mentioned in the Wisconsin Act. There is no "personal effects" category in the Wisconsin law as there is in the Rule.

If a prohibited security interest is taken, under the Act, the consumer may sue to obtain twice the amount of the finance charge or actual damages, whichever is greater. The Commission has concluded that, while the list of items that may not be taken as security is somewhat less inclusive under the Wisconsin Act than under the Rule, the Act with its private right of action does afford substantially equivalent protection to that of the Rule.

In the Statement of Basis and Purpose, it was specifically contemplated that states having a different definition of household goods than that employed in Rule, but providing substantially equivalent or greater protection than the Rule's provision, would petition for exemption from this part of the Rule.[9] As we stated, "This [exemption] provision can be invoked with respect to any provision of the Rule, but we are particularly mindful of the state's role in defining what items are considered necessities, in the context of the Rule's household goods definition."

The limitations on the use of household goods as security imposed under the Wisconsin Act serve to prevent the primary abuse that the Commission identified and that the Rule provision is intended to cure, the practice of taking a blanket security interest in a consumer's household goods.[10] As we noted in the Statement of Basis and Purpose, the law in effect at the time the Rule was enacted afforded, "creditors with maximum flexibility as to the terms contained in security interests, including coverage, description of property, and circumstances under which seizure may take place. The description of property required is minimal. Creditors can often retain a security interest in all of a debtor 'household goods' by simply checking a box on a standard form."

The Wisconsin Act has no equivalent category to that of "personal effects." Although this category is very narrowly limited by the Commission's Statement of Basis and Purpose,[11] it represents a class of items about which the Commission was specifically concerned when we spoke of items having little economic value to the creditor, but being very important to the consumer. We grant the exemption nontheless because we perceive that abusive repossession or threats of repossession of items in the "personal effects" category in particular is linked to the use of blanket security interests and find no evidence in the rulemaking record that creditors specifically enumerated nonpurchase money security interests in items such as family photographs, or pets, for example.

The Commission has concluded that the fact that fewer items are covered by the Wisconsin Act is more than compensated by the private right of action given to consumers by the Wisconsin Act, but not by the Rule, and by the overall enforcement scheme in effect in Wisconsin that should serve to deter creditors from the abuses that led us to enact the Rule provision.

F. Cosigner Provisions

The Rule prohibits a creditor from misrepresenting the nature and extent of a cosigner's liability or failing to inform the cosigner prior to the time that the agreement creating the cosigner's liability is executed of the nature of that liability. The Rule requires that a particular disclosure be provided to a consumer prior to the time that the consumer becomes obligated, and states that a creditor providing that disclosure does not violate the prohibition against misrepresenting or failing to inform the cosigner of his or her liability.

The Wisconsin Act's notice and the notice required by the Rule are similar but not identical. The notice required by the Rule states: (1) That the creditor can collect from the cosigner without first trying to collect from the borrower; (2) that the notice is not the contract that makes the cosigner liable; (3) that the same collection remedies may be used against the cosigner as against the borrower; (4) that if the debt goes into default that fact could become a part of the cosigner's credit history; and (5) that the cosigner should think carefully before becoming obligated.

Section 422.305 of the Wisconsin Act provides that a cosigner must receive a notice called "An Explanation of Personal Obligation" or a copy of all documents evidencing the obligation. The Explanation describes: (1) The cosigner's obligation to pay even though the cosigner may not be entitled to any of the goods or services or the loan provided to the borrower; (2) the fact that the cosigner may be sued even though the borrower may be able to pay; (3) the fact that the notice is not the agreement that makes the cosigner liable; and (4) the fact that the cosigner is entitled to a free copy of any document the cosigner signs endorsing the transaction. The Rule does not require that the cosigner be provided with documents evidencing the obligation as an alternative to providing the notice, as Wisconsin law does.

Wisconsin law prohibits false, misleading, or deceptive statements generally. The state contends that this prohibition covers misrepresenting or failing to disclose a cosigner's liability

[9] Statement of Basis and Purpose, 49 FR 7740, 4469, 7783 (March 1, 1984).

[10] Statement of Basis and Purpose, 49 FR 7740, 7762, 7785 (March 1, 1984).

[11] Personal effects include "those which an individual would ordinarily carry about on his or her person and possessions of uniquely personal nature, such as family photographs."

although misrepresenting or failing to disclose a cosigner's liability is not specifically prohibited by Wisconsin law as it is by the Rule. The Rule provides that a creditor who furnishes the cosigner notice does not violate the prohibition against misrepresenting or failing to disclose a cosigner's liability; the Act has no comparable provision.

The Commission has concluded that the Wisconsin Act differs from the Rule Primarily in that it offers the creditor the alternative of providing the consumer with the loan documents rather than providing the notice. In requiring the notice, the Commission made a finding of fact that consumers usually do not receive the loan documents and determined that creditors were generally not required by law to provide such documents. The Commission perceived this as an important part of the problem that requiring the notice is intended to cure.[12] In adopting the Rule, the Commission declined to include a requirement that cosigners be provided with copies of the loan documents. While we felt that cosigners would benefit from having the documents, we felt that the cost that such a requirement would impose on creditors would be substantially greater that the cost of providing the notice alone.[13] Wisconsin has determined that creditors should be provided with the opportunity to provide the notice or the documents, a choice that permits the individual creditor to determine which option is less costly to the creditor. The Commission concludes that, if a creditor is required, as is the case in Wisconsin, to provide either the loan documents, or the notice and also to refrain from false, misleading, or deceptive statements concerning the cosigner's liability, these two elements, taken together, should address the injury we identified.

Under Wisconsin law, a cosigner who does not receive the required documentation may sue the creditor and recover twice the amount of the finance charge or actual damages, whichever is greater. Here again, the Commission concludes that the existence of a private right of action under the Wisconsin Act, which does not exist under the Rule, makes the Act's enforcement mechanism substantially equivalent to that to the Rule.

G. Late Charges

Sections 422.202(2m)(a) and 203(2) of the Wisconsin Act prohibit the pyramiding of late charges as the Rule does. A creditor who violates the State's prohibitions is subject to damages of the greater of twice the finance charges or the consumer's actual damages. Since the prohibited practice is the same, and the Wisconsin Act provides a private right of action where the Rule does not, the Commission concludes that state law offers protection substantially equivalent to that of the Rule in this instance.

Action Taken

Based on the submission by the Wisconsin Banking Commission in support of its request for an exemption and upon the comments received, the Commission concludes that the State of Wisconsin has in place a comprehensive consumer credit regulatory scheme [14] containing protections against the specific abuses that the Rule is intended to eliminate and providing effective enforcement mechanisms including compliance audits and litigation. The Commission has determined to grant the requested exemption, except as noted, on that basis. The exemption will remain in effect as long as state law continues to afford substantially equivalent protection to that of the Rule.

We note, however, that the protections offered to consumers by the Wisconsin Act as to practices covered by the Rule are limited to credit transactions subject to the Rule in which the amount financed does not exceed $25,000.[15] Thus, there is no state law provision applicable to consumer credit transactions where the amount financed is greater than $25,000. The Commission, therefore, finds that this requirement for exemption under the Rule is not met and the exemption is not granted as to these transactions.

The exemption is denied as to transactions not subject to the Wisconsin Consumer Act. Because the Act in its present form applies to transactions in which the amount financed does not exceed $25,000, the effect of the Commission's action is to deny the exemption for transactions in which the amount financed is greater than $25,00. However, should the Act be amended in the future to apply to transactions in which the amount financed is greater than $25,000, the exemption would automatically extend to such transactions without the necessity of further Commission proceedings.

As contemplated in the staff guidelines, the exemption will continue only for so long as the state effectively administers and enforces its law. To ensure that the conditions for an exemption continue to be met, we require the State of Wisconsin to provide notice to the Commission of any change in its law, policies or procedures, including court decisions, that would significantly affect whether the state law continues to afford substantially equivalent protection and whether the state is effectively enforcing the Act. The Commission reserves the right to revise this reporting requirement at a later date if circumstances warrant or to request additional information if the Commission determines that this is needed.

By direction of the Commission.

Emily H. Rock,

Secretary.

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[12] "In most jurisdictions, the creditor has no obligation to give the cosigner a copy of the contract or advise the cosigner of the extent of his or her liability." Statement of Basis and Purpose, 49 FR 7740, 7773. "Moreover, most cosigners are not provided with copies of the documents they sign or of documents received by the primary debtor." Statement of Basis and Purpose, 49 FR 7740, 7775.

[13] Statement of Basis and Purpose, 49 FR 7740, 7787.

[14] In the Statement of Basis and Purpose, the Commission noted that, during the rulemaking proceeding, Wisconsin was identified as being one of three states having legal regimes comparable to (or stricter than) the Rule as proposed. 49 FR 7740, 7780.

[15] As noted above, a separate Wisconsin law does prohibit the pyramiding of late charges in first mortgage loans without regard to the amount financed. However, first mortgage loans are not subject to the Rule.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 11, 13 and 375

[Docket No. RM83-57-000; Order No. 453]

Payments for Benefits From Headwater Improvements

Issued: June 24, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting a final rule that sets forth a generic formula and procedures for determining and assessing headwater benefits payments. Under section 10(f) of the Federal Power Act, the Commission is required to divide among downstream projects the interest, maintenance and depreciation portion of the cost of facilities at the headwater project which result in increased power generation (the "headwater benefit") at the downstream projects. The headwater project costs to be recovered are referred to as the "section 10(f) costs."

The final rule codifies the "energy gains" method of apportioning the headwater project's section 10(f) costs to each downstream project according to its share of the total extra power generation made possible by the headwater project.

The rule excludes from the energy gains methodology projects that are part of a coordination agreement under which the Commission has approved headwater benefits payments and projects for which headwater benefits payments have been established in a Commission-approved settlement. The rule waives headwater benefits payments for all projects with generating capacity of 1.5 megawatts or less. Projects which currently are being assessed headwater benefits charges under another method will be grandfathered under that method until changes occur in the river basin that affect headwater benefits.

The rule specifies procedures for assessing headwater benefits payments, including provisions for conducting investigations to determine the amount of headwater benefits, streamlined data filing requirements, procedures for the assessment and payment of interim and final charges, and procedures for raising objections to assessments.

Generally, the rule will maintain headwater benefits charges at the current, or a slightly lower level.

EFFECTIVE DATE: Because the reporting requirement of the rule are being submitted to the Office of Management and Budget under the Paperwork Reduction Act, this rule will be effective September 16, 1986.

FOR FURTHER INFORMATION CONTACT: Janet Oakely, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NW., Washington, DC 20426, (202) 357–5771.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is adopting a final rule that sets forth a generic formula and procedures for determining and assessing headwater benefits payments. These are payments required by section 10(f) of the Federal Power Act (FPA) [1] to be made by certain downstream hydroelectric power projects that directly benefit from headwater projects. The payments are based on an equitable apportionment of the annual cost of interest, maintenance, and depreciation for headwater projects that increase electric generation downstream.

Under the rule, the Commission will determine the cost of facilities at the headwater project which create benefits in the form of electric generation both at the headwater project and downstream from it. This so-called "joint-use power cost" is primarily derived from the costs of the dam and reservoir. The portion of this cost attributable to interest, maintenance, and depreciation is referred to as the "section 10(f) cost" and is apportioned among the headwater and downstream projects based on the respective amounts of energy which they derive from the pertinent headwater project facilities.

The rule also specifies procedural mechanisms for the assessment of headwater benefits charges.

II. Background

On December 29, 1983, the Commission issued a Notice of Proposed Rulemaking (Notice) to amend 18 CFR 11.25–11.31 and 13.1,[2] which implement section 10(f) of the FPA, requiring payments for benefits from headwater improvements. Thirty-two commenters submitted comments in response to the Notice. This final rule implements, with some changes, the proposal discussed in the Notice.

Under section 10(f), the licensees or owners of unlicensed non-Federal hydroelectric power projects that are directly benefited by a headwater project [3] constructed either by the United States or by a Federal licensee or pre-1920 permittee must pay an "equitable" portion of the annual costs of interest, maintenance, and depreciation of the headwater project. This payment is called the headwater benefits payment.

The Commission has identified approximately 60 licensees with projects downstream from Federal headwater projects. There are an undetermined but much larger number of downstream projects benefitting from non-Federal headwater projects. Annual payments for headwater benefits from Federal projects total approximately $5 million; payments approved by the Commission for benefits from non-Federal projects also total approximately $5 million per year.

A. The Statute

Section 10(f) of the FPA provides, in pertinent part, as follows:

> [W]henever any licensee [under Part I of the EPA] is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Commission shall require as a condition of the license that the licensee so benefited shall reimburse the owner of such reservoir or other improvements for *such part of the annual charges for interest, maintenance, and depreciation thereon as the Commission may deem equitable.* The proportion of such charges to be paid by any licensee shall be determined by the Commission. The licensees or permittees affected shall pay to the United States the cost of making such determination as fixed by the Commission. [Emphasis added.]

Another part of section 10(f) imposes a similar obligation to pay headwater benefits charges on unlicensed downstream beneficiaries.

B. Calculation of Headwater Benefits Charges

Historically, headwater benefits charges have been calculated by first determining the costs of the facilities at the headwater project that enhance electric generation and then apportioning among the beneficiaries the interest, maintenance, and depreciation portion of those costs.

1. Allocation of headwater project costs

Determining the costs of headwater project facilities that enhance electric generation is a two-step process. The first step is allocation of the total costs of the headwater project among the various authorized purposes of the project. These purposes may include flood control, navigation, irrigation, and power production.

The second step is to identify those headwater project costs attributable to facilities that provide power benefits to the downstream projects and also may provide power benefits to the headwater project.[4] The annual interest, maintenance and depreciation costs allocated to these facilities constitute the section 10(f) cost that the Commission must apportion equitably among the beneficiaries.[5]

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[1] 16 U.S.C. 803(f) (1982).

[2] Notice of Proposed Rulemaking, Payments for Benefits from Headwater Improvements, 49 FR 1067 (Jan. 9, 1984).

[3] Upstream (headwater) projects can directly benefit downstream power projects chiefly by storing or releasing water from a headwater storage facility so as to make possible additional electric power generation at a downstream project.

[4] This allocation excludes the costs of facilities that benefit only the upstream project, such as its own powerhouse.

[5] The section 10(f) cost includes *only* costs that are assigned to the power function of the headwater project. There are a few unique situations where, for example, a statutory provision directs non-power facilities, such as irrigation facilities, to be included with the power-related facilities and to be paid for by power revenues. If the legislation authorizing the

Continued

During the life of the headwater project, the allocation ratio of the section 10(f) cost to the total project costs, as well as the total project costs themselves, ordinarily will not change significantly unless a new purpose is authorized for the project or the project maintenance costs or operation are significantly modified. Thus, the dollar amount of the section 10(f) cost remains generally stable. This means that, as a rule, a downstream project's headwater benefits charge will change only if the project is being apportioned a greater or lesser percentage of the relatively fixed section 10(f) cost because of variations in its energy gains.[6]

2. Apportionment of section 10(f) costs

Once the section 10(f) cost has been determined, it must be apportioned among the headwater and downstream parties. The Commission has used a variety of methods to apportion section 10(f) costs pursuant to its regulatory scheme in 18 CFR 11.26–11.32. The methods used are described below.

(a) *Value method.* Until recently, the most frequently used method was the "Allatoona" or "value" method.[7] Under this method, section 10(f) costs are apportioned according to the monetary *value* of the power benefits (energy and dependable capacity) at the headwater site and at downstream projects.[8]

When the headwater project is a Federal project, the value of power benefits provided to it is calculated as the cost of producing that power, since Federal power is sold at cost.[9] The value of power benefits to a downstream project is determined by pricing the gains in energy and dependable capacity[10] realized at that project at the cost of obtaining an equivalent amount of energy and capacity from the most likely alternative source, which is generally a steam electric generating plant. The "value" method of apportioning section 10(f) costs has been unheld as a reasonable, but not the sole, method of equitably apportioning these costs.[11]

Since 1974, use of the value method has caused a significant increase in the percentage of section 10(f) costs apportioned to downstream projects when the headwater project is a Federal facility. As inflation and the cost of alternative fuels increased dramatically, the value of the energy and capacity gains to downstream projects increased concomitantly, while the value of power benefits to the Federal headwater projects, where value is calculated as the cost of producing the power, remained relatively stable.[12] The difficulty with the value method lies not only in the assignment to the downstream project of an increasing percentage of the section 10(f) cost that is disproportionate to the benefits derived from the headwater project, but also in the complexity of calculating dependable capacity gains.

(b) *Other methods previously employed.* The Commission has used variations of the value method and variations of the energy gains method adopted by this rule. For a few river basins where the downstream project is assured of scheduled water releases, generally by a coordination agreement for operation of projects within a basin, the Commission has also used the "critical period" procedure set forth in § 11.28(a) of the current regulations. Under that method, the section 10(f) costs are apportioned according to the value of the power benefits realized from storage during the "critical period."[13]

In addition, under § 13.1 of the Commission's regulations, non-Federal owners of headwater projects (licensees and pre-1920 permittees) may arrive at a settlement with downstream project owners, subject to Commission approval, in lieu of a Commission investigation and proceeding.

(c) *The energy gains method.* In 1983, in *Virginia Electric and Power Co. and Dan River, Inc.* (*"Roanoke"*),[14] the Commission departed from the value method and apportioned the section 10(f) cost based on the comparative gains in energy produced at the headwater project and at the downstream project, rather than on the monetary value of energy and dependable capacity gains. Payments were based on actual energy gains for a portion of the study period and on average annual energy gains over the remainder of the period and for the future. The order provided that the payments would be continued until a new investigation is performed because of changes in the economy, in project operation, or in the development of the river basin. The *Roanoke* case was the impetus for a rulemaking that would apply the energy gains method.

III. Comment Analysis and Description of the Rule

A. General Discussion

The primary provision of the final rule is the codification of the apportionment method used in the *Roanoke* case. After reviewing the various ways of apportioning section 10(f) costs as a basis for headwater benefits charges, the Commission has determined that the *Roanoke* (or energy gains) method best fulfills the requirements of law while providing administrative ease. The energy gains method is designed to achieve several goals: (1) An equitable apportionment of the section 10(f) cost that is not subject to potentially volatile economic factors, such as the price of oil and the rate of inflation; (2) expeditious assessment of headwater benefits charges through adoption of a methodology more easily administered and less subject to disputes over complex fact determinations; (3) a greater degree of predictability for developers and potential developers; and (4) a reduction in the costs of headwater benefits investigations.

This method apportions section 10(f) costs based on the energy gains of the headwater and downstream plants. The rule is generally applicable, with certain exception discussed below.

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project specifies that certain non-power costs are to be borne by power revenues, these costs would be apportioned under section 10(f). The proposed term, "headwater benefits costs," which was defined similarly to "10(f) costs," has been deleted from the final rule to avoid duplication and confusion.

[6] "Energy gains," as defined in the rule, means the difference between the energy a downstream project would produce with the headwater project and the energy it would produce without that project. *See* § 11.10(b)(1).

[7] The method was first used to apportion section 10(f) costs from the Federal Allatoona project. *See* Alabama Power Co., 13 F.P.C. 1317 (1954).

[8] The Allatoona formula reads as follows:

$P_n = C_p \times (V_n / V_f \times V_d)$

In which:

P_n = annual payment to be made for headwater benefits received at a downstream non-Federal plant (or group of plants),

C_p = total annual section 10(f) costs of the headwater improvement,

V_n = net annual monetary value of benefits received at a downstream plant (or plants),

V_f = annual monetary value of the headwater improvement to at-site power production, and

V_d = net annual monetary value of benefits received at all downstream plants.

[9] Flood Control Act of 1944, 16 U.S.C. 832s (1982), and other legislation.

[10] Dependable capacity gains relate to increased ability to meet load requirements because of the headwater project.

[11] Alabama Power Co. v. FPC, 450 F.2d 716 (D.C. Cir. 1971); South Carolina Electric and Gas Co. v. FPC, 338 F.2d 898 (4th Cir. 1964).

[12] In other words, while the V_n and V_d figures in the Allatoona formula have increased due to inflation and the increase in alternative fuel costs, the C_p and V_f figures, where the headwater project is a Federal project, have remained fairly constant.

[13] "Critical period" means the time during which all water storage at a reservoir would be released for power production, assuming recurrence of the most adverse stream flow conditions of record for the area (§ 11.26(b)(1)).

[14] 22 FERC ¶ 61,351 (1983).

B. Applicability of the Rule

The final rule, in § 11.11(a), sets forth the general applicability of the energy gains method, with exceptions as follows:

(1) If the Commission has approved headwater benefits charges pursuant to an existing coordination agreement among the parties;

(2) If the parties reach, and the Commission approves, a settlement with respect to headwater benefits charges, pursuant to § 11.14(a) of the final rule; or

(3) If previous charges for a project are "grandfathered" under § 11.14(b) of the final rule.

While § 11.11 of the final rule governs charges for benefits provided by headwater projects owned by the Federal government, the energy gains method is also applicable for charges for benefits provided by non-Federal headwater projects [15] for which the Commission is requested to make a determination.

1. Approved Headwater Benefits Charges Pursuant to an Existing Coordination Agreement Among the Parties.

Several utilities in Washington, Oregon, and Montana with projects located in the Columbia River basin oppose the implementation of this rule in their region, citing the Pacific Northwest Coordination Agreement (PNCA). The comments discuss the unique nature of the Columbia River basin. The firm energy load-carrying capability of the Columbia River system is derived on the basis of a "critical period" analysis, and the various arrangements among parties in the Northwest are designed to ensure that storage will be operated to provide each party with the capability to meet its firm energy load. The comments argue that the coordination provisions of the PNCA recognize that unique nature of the system, and that the energy gains method as proposed in the Notice does not.

The final rule, at § 11.11(a)(1), addresses these concerns by excluding from the energy gains methodology any projects that are subject to an existing coordination agreement under which the Commission has approved headwater benefits charges. The PNCA is such an agreement. Although these projects are excluded by the rule from application of the energy gains method of determining headwater benefits, the rule does not limit the Commission's authority to determine headwater benefits for these projects using other methods.

2. Approved Settlements

Under the provision of § 11.14(a), projects that are subject to a settlement that is approved by the Commission will not be subject to a Commission determination under the energy gains method.

The Edison Electric Institute (EEI) suggests that the Commission revise proposed § 11.29 of the rule so that it expressly applies to settlements to which Federal as well as non-Federal entities are parties. Section 11.14(a) in this final rule has been modified to indicate that the Commission will consider settlements with Federal headwater projects as well as settlements between non-Federal projects. Settlements between downstream projects and Federal headwater projects must result in approximately the same payment that would result from a Commission determination under the energy gains method using the Headwater Benefits Energy Gains (HWBEG) Model. The Commission, therefore, strongly suggests that parties to a settlement involving a Federal headwater project adhere to the energy gains method as applied in the HWBEG Model when negotiating such a settlement. The HWBEG Model and its availability are discussed more fully below.

3. Payments Based on Previous Determinations

Section 11.14(b) of the order "grandfathers" projects that are currently being assessed headwater benefits charges according to the method by which those charges are being determined at the time the rule becomes effective. It also "grandfathers" the current final charge for projects for which charges have been established prospectively under a Commission order or pursuant to § 11.31 of the current regulations. For projects that are grandfathered, additional calculations pursuant to the energy gains method prescribed by this rule will not be made until changes occur in the river basin that affect headwater benefits.

Most Commission orders establishing payments for future years state that certain payments are to be made annually until changes in conditions warrant reappraisal of the headwater benefits charge.[16] Many of these payments have not reflected recent significant changes in section 10(f) costs or changes in energy gains. The Commission believes that a significant change in section 10(f) costs or energy gains warrants reappraisal of the headwater benefits payment. In those circumstances, therefore, the rule will apply to the determination of charges made pursuant to a reappraisal. For the limited number of orders establishing prospective charges that, by the terms of the order, may not be changed, there will be no redetermination of payments.

Municipal Systems [17] request that the rule be modified to provide guidance on redetermination of prospectively established charges when a new downstream project is built or a project is retired.

Even though they are not expressly addressed in the rule, the building of a new downstream project or the retirement of one would constitute a change in the development of the basin warranting a new investigation to determine if the headwater benefits charges should be changed. The new investigation would include examining what effect the change has on the amount of energy gains received downstream and could lead to the establishment of a new final charge.

4. Waiver for Downstream Projects With Generating Capacity of 1.5 MW or Less

The rule, at § 11.10(b), provides a waiver from headwater benefits payments for downstream projects having an installed generating capacity of 1.5 MW (2,000 horsepower) or less. This provision reflects the Commission's longstanding practice of waiving section 10(f) [18] (and certain other sections) of the FPA in issuing licenses for minor projects—*i.e.*, those having 1.5 MW or less of installed capacity—pursuant to section 10(i) of the FPA.[19]

The City of Redding (Redding) urges the Commission to exempt from the rule projects of 30 MW or less of installed capacity. The Commission recognizes the desirability of minimizing the regulatory burden for small projects. For example, under the provisions of section 405 of the Public Utilities Regulatory Policies Act (PURPA), the Commission

[15] These non-Federal projects are headwater projects contructed by a licensee of pre-1920 permittee. A commenter has suggested that the term "permittee," as used in the Notice might be confused with a Commission preliminary permit holder. The final rule substitutes the term "pre-1920 permittee" in order to clarify that it refers to developments with valid pre-1920 permits from other Federal agencies. *See* section 23 of the FPA, 16 U.S.C. 816–17 (1982).

[16] *E.g.*, South Carolina Electric and Gas Company (Savannah River, Headwater Benefits Determination), 40 F.P.C. 306 (1968).

[17] Municipal Systems are the cities of Anaheim, Riverside, Azusa, Banning, and Colton, California; Gillette, Wyoming; the Northern California Power Agency; and Sacramento Municipal Utility District.

[18] *See* § 11.27 (a) and (b) and § 11.28 of the current regulations.

[19] 16 U.S.C. 803(i) (1982).

exempts certain projects with generating capacity of 5 MW or less from the licensing requirements of Part I of the FPA, including payment for headwater benefits under section 10(f). In addition, the Commission exempts from Part I, including section 10(f), certain projects with capacity of 15 MW or less under section 30 of the FPA. In this rule, the Commission has exercised the extent of its authority to waive the section 10(f) requirement when licensing small projects by providing an across-the-board waiver for all projects with capacity of 1.5 MW or less. The Commission has no authority to exempt from or waive the requirements of section 10(f) of the extent Redding desires.

Pacific Gas and Electric Company (PG&E) urges that the rule must not exclude from headwater benefits charges any projects on the basis of installed capacity. The comment contends that the headwater project owner's right to collect headwater benefits assessments cannot be waived under section 10(i) of the FPA. The Commission, however, has clear authority to waive the section 10(f) requirement for minor projects,[20] and has done so in project licenses for many years.

C. Allocation of Section 10(f) Costs

Redding, EEI, Minnesota Power and Light Company (MP&L), Northern States Power Company (NSP), Alabama Power Company, and Montana Power Company noted that the regulations proposed in the Notice did not address how the section 10(f) cost would be determined, and requested that the Commission identify the methods to be used to allocate headwater project costs (the total costs of an upstream project) among the headwater project functions.

If a party requests the Commission to determine charges for benefits from a non-Federal headwater project, the Commission will determine on a case-by-case basis what portion of the annual interest, maintenance, and depreciation [21] costs of the headwater project constitutes the section 10(f) cost. *See* § 11.12(a).

The final rule incorporates the existing methodology for allocating Federal headwater project costs so as to derive the section 10(f) cost. Section 11.12(b) sets forth the general allocation scheme the Commission has historically used. The method, as described through the definitions of terms used in § 11.12(b), is generally the separable cost/remaining benefits method widely employed by Federal water resource agencies in assigning costs and benefits to the various functions of a water resource project. In describing the allocation, the Commission has replaced the terms "joint-use facility," "joint-use power facility," "specific facility," and "specific power facility" with "joint-use costs," "joint-use power costs," and "specific power costs" to more accurately define the concepts. The terms "separable costs" and "remaining benefits" are added to the definitions.

In most cases the Federal agency responsible for the project authorization, such as the Bureau of Reclamation and the Corps of Engineers, is also responsible for the allocation of costs among the several purposes of the project. Where power is an authorized purpose of a Federal headwater project, the Commission solicits from the Federal owner a breakdown of the costs allocated to the power function of the headwater project. Excluded from these costs are costs for facilities that do not serve the power function of the headwater project (*e.g.*, intake structure for consumptive water supply, recreation piers). The Commission carefully examines but generally adopts the administering agency's allocation for the purposes of its headwater benefits determinations.

As requested by the National Wildlife Foundation, MP&L, NSP, and EEI, the final rule describes, at § 11.12(b)(2), the allocation of headwater project costs for headwater projects which do not themselves generate power but which benefit power production at downstream projects. The Commission will continue its practice of allocating a portion of the costs of such headwater projects to a power function and apportioning that cost to downstream projects to account for the energy benefits they receive. The Commission believes that such allocation is appropriate in order to recoup the section 10(f) costs. Whether or not the headwater project has power generation has no bearing on the fact that downstream projects may obtain benefits from the headwater project and on the statutory requirement to pay an equitable share of the headwater project costs.

The provision at § 11.26(b)(2) addresses the concerns of MP&L NSP, and EEI that the valuation of downstream energy gains, for purposes of designating a joint-use power cost for a headwater project with no power function, be on the same basis, in time or dollars, as the valuation of the headwater project's authorized purposes.

In those cases where allocation is not made by the administering agency or where power is not a purpose of the project, the Commission will use the separable cost/remaining benefits method to make the allocation unless inadequate or insufficient data available to the Commission make use of that method infeasible.

Some commenters propose that, for the sake of equity, the Commission should allocate joint-use power costs not only to congressionally authorized purposes of a project, but also to other beneficial functions of the headwater project. These comments, from Ford Motor Company, MP&L, EEI, and NSP, suggest that Federal headwater projects provide significant public interest benefits for which no charges are assessed, such as recreation and fish and wildlife enhancement. Quantification of these benefits would however be very difficult, would increase the cost of headwater benefits investigations, and would most likely sharply reduce the potential for settlements. For these reasons, except in those cases where costs are allocated to power at projects with no authorized power function, the Commission believes that it is not appropriate to allocate section 10(f) costs to unauthorized purposes of the headwater project.

D. Apportionment of Section 10(f) Costs

The section 10(f) costs will be apportioned among the headwater and downstream projects on the basis of each downstream project's share of the total downstream energy gains resulting from the headwater project and energy produced at the headwater project attributable to the joint-use power costs. The formula is:

$$P = C_P \times \frac{E_n}{E_j + E_d}$$

In which:

P = annual payment to be made for headwater benefits received by a downstream project,

C_P = annual section 10(f) cost of the headwater project,

E_n = annual energy gains received at a downstream project, or group of projects if owned by one entity,

[20] Section 10(i) provides only two limitations on the Commission's authority to waive the provisions of Part I for projects of 1.5 MW or less: It cannot issue a license for more than a 50-year term, and it cannot waive annual charges for use of lands within the Indian reservations.

[21] PG&E requested definitions of interest, maintenance, and depreciation. The Commission believes these terms to be so commonly used that definitions for them are unnecessary.

E_d = annual energy gains received at all downstream projects not exempted or waived from section 10(f),[22] and
E_j = portion of the annual energy generated at the headwater project attributable to the joint-use power costs.

The total annual energy generation of the headwater project that is to be attributable to the joint-use power cost is derived as follows:

$$E_j = E \times \frac{C_j}{C_s + C_j}$$

In which:

E_j = annual energy generated at the headwater project to be attributed to the joint-use power cost,
E = total annual generation at the headwater project,
C_j = project investment cost [23] assigned to the joint-use power costs, and
C_s = project investment costs assigned to specific power costs.

Of the commenters that oppose a generic application of the energy gains method of apportionment, all but one (considered in the next section) are concerned that it is not a feasible method for projects in the Northwest that are subject to a coordination agreement regulating flow to assure firm energy production. Under the final rule these projects are not subject to application of the energy gains method.

1. Energy Gains Calculations

Alabama Power Company and Arkansas Power and Light Company comment that the Notice did not sufficiently explain what methodology the Commission would use to calculate energy gains. Both suggested that specifying in the rule the methodology to be used would increase predictability and administrative efficiency and reduce the potential for litigation. Alabama Power points out that the energy gains determination lends itself to a standardized computer simulation.

The Commission does, in fact, use a computer model, the Headwater Benefits Energy Gains (HWBEG) Model. The HWBEG Model assembles streamflows that would theoretically be available for energy production under varying conditions of upstream reservoir operation. The model eliminates all upstream storage changes to simulate an unregulated flow condition. Upstream storage changes are then added back to the unregulated flow in the sequence in which reservoirs began affecting streamflows. As the effects of each reservoir are added back to the river system, the hydropower generation attributable to that theoretical flow condition is calculated. Energy gains are then determined as differences in generation with and without the chronologically sequenced effects of upstream storage. The model uses an arborescent representation of the river system to assemble unregulated and theoretical streamflows, to invoke reservoir operating rules in proper sequence, and to calculate energy generation using hydropower plant rating equations.[24]

Ford Motor Company's comments are critical of the energy gains method, stating that energy gains received downstream are speculative.[25] While the Commission agrees that complex hydrological factors are involved in the calculation of energy gains, it is satisfied that the energy gains method used, as described in the HWBEG Model, provides a reasonably accurate calculation.

The final rule provides, at § 11.13(a), that energy gains will be determined by application of the HWBEG Model. If the use of the computer model would not be economical in a particular case because the calculations are not complex or the headwater benefits are expected to be small, the Commission may elect not to use the model. Although the model may not be used in such cases, the calculations will, however, be made using the headwater benefits formula set forth above.

Redding proposes that the Commission alter the headwater benefits formula to include the total generation of the headwater project in the apportionment of section 10(f) costs rather than only that portion of headwater project generation attributable to joint-use power costs (*i.e.*, "E_j" in the formula would be replaced by "E"). Redding maintains that including only that proportion of the total headwater project's generation that is attributed to joint-use power costs rewards inefficiencies at the headwater project that may reduce its energy generation potential and penalizes efficiencies at the downstream project that result in greater generation.

The Commission is apportioning the cost of those facilities at the headwater project that benefit power generation downstream. Calculating the headwater project's share based on the cost of all power facilities at the headwater project would skew the apportionment and design a disproportionate share of the cost to the headwater project.

2. Exceptions to Headwater Benefits Formula

There are two exceptions to the method of determining the amount of headwater project energy to be included in the energy gains formula: (1) If the headwater project contains a pumped storage facility,[26] and (2) if no energy is generated at the headwater project.

a. *Headwater projects with pumped storage.* The comments of Union Electric Company state that, if a headwater project includes a pumped storage facility, it is unclear whether the proposed rule adequately distinguishes generation from natural inflow and generation from the pumped water. The commenter also questions whether proposed § 11.28(a) of the Notice covers assessment for headwater benefits supplied by pumped storage facilities.

The final rule applies to the calculation of headwater benefits from a pumped storage headwater project. However, because of the competing considerations that may be involved in the treatment of generation at pumped storage facilities at individual headwater projects, the Commission will calculate on a case-by-case basis the headwater project's share of the total energy benefits resulting from its operation. There are very few pumped storage headwater projects, and therefore this limited exception.

[22] As under present practice, federally-owned downstream plants are included in the E_d term of the apportionment formula, although they are not actually assessed a headwater benefits charge. In those cases, section 10(f) costs are not completely recovered.

[23] In response to a comment from PG&E, the Commission has provided a definition for "investment cost" at § 11.10(b)(13). It includes project construction costs and interest during construction.

[24] A more detailed explanation of the HWBEG computer model is contained in *The Headwater Benefits Energy Gains (HWBEG) Model Description and Users Manual.* A report titled *The Allocation and Apportionment of Joint-Use Cost to Power: A Report on the Assessment of Headwater Benefits Charges* may also be helpful. Both documents were prepared by Oak Ridge National Laboratory for the Commission and are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

[25] Ford Motor Company suggests the Commission adopt a form of flat rate method of assessment of headwater benefits charges. The Commission has considered this approach and, in fact, bases its charges for use of government dams under section 10(e) of the FPA on a graduated flat rate. *See* 18 CFR 11.22 (1985). The Commission may have discretion to adopt a similar flat rate approach when it sets an "equitable" charge under section 10(f). However, section 10(f) more specifically directs the Commission to require project owners to pay for benefits in terms of identifiable interest, depreciation and maintenance costs. Because section 10(f) provides a more specific scheme than section 10(e), the Commission has determined that its calculation should relate specific facilities and the interest, depreciation and maintenance expenses underlying them, with specific power generation benefits.

[26] A "pumped storage facility" generates electrical energy for peak load use with water pumped into a storage reservoir during off-peak periods.

provided for in § 11.13(b)(2)) of the rule, will detract only minimally from the Commission's purposes in promulgating this rule.

The Commission has defined "generation" to note that, for purposes of headwater benefits determinations, it does not include energy "used for or derived from" pumping in a pumped storage facility. Furthermore, the data submission provisions in § 11.16 specifically require that project owners distinguish pumped storage energy and capacity from total generation and generating capacity.

b. *Headwater projects with no power generation.* For headwater projects where no energy is generated, there is no actual generation to attribute to the joint-use power costs. In such cases, the Commission will attribute to the headwater project's joint-use power costs the total of all downstream energy gains. *See* § 11.13(b)(3).

3. Limitation on Payments

The Notice proposed that the Commission, in using the energy gains method, would establish a limitation or "cap" on the headwater benefits payments. Under the proposed limitation, the Commission would not assess more than the value of the energy gains. The burden would be on the downstream project owner to demonstrate that a charge under the energy gains method exceeded the value of the energy gains.

Union Electric Company, MP&L, NSP and EEI argue that the cap is too high. With the cost of the headwater benefits investigation added to the value of the energy gains, the cost of the project's energy gain could exceed that of energy obtained elsewhere, reducing the incentive to fully utilize the project. The comments suggest that the Commission lower this cap to a percentage of the actual value of the energy gains to the downstream project.

In the Commission's view, any provision for limiting the payments to the value of the energy gains should have little applicability in practice. Downstream power beneficiaries pay only that portion of the interest, maintenance, and depreciation costs of the headwater project that are allocated to power, and no part of the operation costs. Moreover, construction costs of most headwater projects were much less than comparable costs today. Federal projects were constructed with interest rates that are far below the present level. It is likely, therefore, that the section 10(f) costs collected through payments by downstream power beneficiaries are less than half of the actual value of benefits received.

Nonetheless, despite the expected limited application of the cap, the Commission recognizes that the possible disincentive effect of the proposed cap, as pointed out by the commenters, is a valid concern and should be addressed for those projects for which it may apply. With a cap that limits charges to 100 percent of the value of the energy gains, the downstream project would not net any benefit from the operation of the headwater project. Therefore, the final rule, at § 11.11(b)(5), lowers the cap to 85 percent of the actual value of the energy gains. This lower cap will make allowance for the payment of costs of the headwater benefits investigation. However, before this limitation will be implemented by the Commission, the downstream project owner must demonstrate that the Commission's determination exceeds 85 percent of the value of the energy.

4. Application of First-in-Time Principle

The final rule retains the first-in-time principle proposed in the Notice. *See* § 11.13(a)(2). This principle gives recognition to the time sequence in which projects become operational. Two upstream reservoirs are not entitled to share equally in the headwater benefit payments from downstream developers if the first-in-time project, that is, the first project built, was providing, for example, 90 percent of the current benefits to the downstream project before the second-in-time project became operational. The Commission believes it more equitable to credit the first-in-time plant with the benefits historically resulting from it and the second plant with the remaining incremental benefits.

Municipal Systems suggests that the Commission clarify that "first-in-time" refers to the first project built, rather than the most upstream project. The final rule specifies that energy gains will be attributed "according to the time sequence of commencement of operation in which each headwater project provided energy gains at the downstream project. . . ."

Comments of Public Utility District (PUD) Number 1 of Chelan County, PUD of Pend Oreille County, Pacific Power and Light Company, and Washington Water Power Company state that the Commission's "first-in-time" principle cannot be used in all river basins. They explain that, if reservoir operation is based on critical water energy the regulation of the reservoir does not recognize when each project is built, and that the principle is inappropriate, if not unworkable, for projects on a coordinated system. In the final rule, if the Commission has approved payments made pursuant to a coordination agreement, the energy gains method, utilizing the first-in-time principle, will not be applied.

The Commission reaffirms the general applicability of this principle to those situations in which the energy gains method will be used.

5. Netting of Energy Losses

The proposed rule stated that, if a headwater project is built after the downstream project was built, payments will not be assessed until energy losses at the downstream project due to the filling of the upstream reservoir have been offset by subsequent energy gains. Under the proposal, net losses for an annual period could not be carried over to the following year. Georgia Power Company, NSP and EEI argue that this is inequitable and that net losses should be allowed to be carried over and applied against future gains. Georgia Power's comments suggest that the Commission should recognize and allow credit for a headwater project's detrimental effects downstream just as fully as it recognizes and requires payment for the project's benefits.

The Commission has addressed these concerns in the final rule by providing that a net loss in one calendar year will be subtracted from net gains in subsequent years until no net loss remains. Section 11.13(a)(3) reflects this modification.

6. Deletion of Dependable Capacity Gains

Two comments addressed the proposal to delete dependable capacity gains from headwater benefits calculations. Union Electric Company agreed with the proposal. Ebasco Business Consulting Company, the other commenter, stated that a more equitable apportionment would be derived by including dependable capacity gains and that failure to include it in the rule might jeopardize a non-Federal headwater project's ability to negotiate an equitable settlement.

Determining dependable capacity gains and their value has proven to be a highly complex, time-consuming, and expensive undertaking.[27] One of the

[27] For example, in two proceedings involving Commission assessments of headwater benefits payments that included dependable capacity, negotiations between the parties and the Commission on a reasonable assessment spanned a five-year period. The Commission's calculation of dependable capacity gains was the central issue in those proceedings. *See* Alabama Power Co., 55 F.P.C. 100 (1976), 59 F.P.C. 117 (1977); Georgia Power Co., 55 F.P.C. 102 (1976), 59 F.P.C. 165 (1977).

primary purposes of the new rule is to simplify the methodology and procedure for assessing headwater benefits charges so as to reduce investigative time and costs involved and consequently to obtain more prompt payments. On balance, therefore, the Commission believes that deleting dependable capacity gains as a factor in headwater benefits is a reasonable and pragmatic adjustment in the interest of administrative feasibility and a more timely recapture of the costs of benefits bestowed by headwater projects.

E. Investigations and Billings

1. Initiation of Investigations

Section 11.15(c) provides that the Commission will make headwater benefits determinations through investigations. Investigations will be conducted to determine benefits for downstream projects for which a determination has never been made or to determine if a final charge that has been established prospectively, or a variable of the formula that has become a constant, should be changed. Except for the first investigation for a project, investigations generally will occur when there has been some change in a previously stable river basin that affects the amount of energy gains or apportionment of section 10(f) cost, such as a new project commencing operation or major maintenance at the headwater project. The Commission will notify all parties when it commences an investigation.

The final rule requires that parties raise any jurisdictional objections to the assessment of headwater benefits within 30 days of notification of commencement of an investigation. This will allow the resolution of such jurisdictional issues before the Commission or the parties have expended substantial time or resources on the investigation.

Municipal Systems notes that, according to § 11.29(b) of the proposed rule, in response to a request by a headwater licensee or pre-1920 permittee, a preliminary study pursuant to § 11.28(a) of the proposed rule would occur. The comment suggests that the downstream parties should have the same right. The Commission agrees that a downstream party should have the same ability to cause initiation of an investigation as the headwater party, and therefore § 11.15(a) of the final rule incorporates this suggestion by providing that the Commission will investigate and determine charges upon the request of "one of the parties" if the parties are unable to agree to a settlement.

2. Scope of the Investigation

The Notice provided that parties may reach an agreement concerning the detail and amount of data to be collected to perform an apportionment; however, the Commission would not be bound by such an agreement. PG&E argues that the Commission should be bound by agreements limiting investigations if they are fair and reasonable and in the public interest.

The Commission disagrees with this proposition. When the Commission is making the headwater benefits determination, it must retain the discretion to determine the scope of investigation necessary to calculate an accurate final charge. Because the Commission will retain such discretion, it has deleted the provisions referring to agreements among parties.

Municipal Systems urges the Commission to do everything feasible to keep costs of investigations as low as possible. The cost to the parties for an investigation will vary directly with the scope of the investigation. The cost is a factor that the Commission considers in determining the scope of the investigation.

The scope of the investigation will be determined by the Commission based on such criteria as the amount and quality of historical data for the river basin and the stability of development of the basin. The scope will also be influenced by the Commission's objective to promote efficient use of Commission resources and to make the regulatory burden on affected parties commensurate with the nature of the river basin and the projects involved. Since the costs of investigations are paid by project owners, the Commission will balance their interest in limiting those costs with the Commission's responsibility to achieve, and the project owners' interest in, an accurate charge.

The Notice proposed that the Commission may conduct preliminary studies to determine whether a detailed investigation is warranted. The final order does not differentiate in this way; what the Notice referred to as preliminary and detailed studies is encompassed within the final rule's provision for an investigation. The proposed "preliminary" investigation is the equivalent of an investigation with a narrower scope than that envisioned in a "detailed" investigation. The Commission will limit the scope of the investigation whenever possible, but may find, upon entering into the investigation, that a more in-depth investigation than originally planned is necessary. The scope of investigations may, of necessity, be circumscribed by, for example, a lack of historical data. On the other hand, where adequate information is available, the Commission may find it necessary to study that information in greater depth, to study the same information for a greater number of years, or to seek additional information. When the Commission initiates an investigation, it may know that, because of the complexity of the river basin, the absence of well-developed data gained from previous investigations for that project or for other projects in the same river basin, or for other reasons, the investigation will require more data and closer scrutiny of that data than might otherwise be required. Such investigations may take several years to complete. On the other hand, the first investigation of a project in a river basin in which other projects have been investigated previously, or a new investigation for a project that has been itself the subject of a previous investigation, may require a comparatively limited amount of data analysis and time.

If a party objects to a preliminary assessment of a final charge developed through an investigation of limited scope, the Commission may, in lieu of issuing an order and bill at that time, expand the investigation to ensure an accurate charge. An investigation will be determinated when final charges have been established for all years studied in the investigation.

3. Filing of Data

The final rule contains a list of the information that must be filed annually and upon initiation of an investigation. The list of information the owner of the headwater project is required to submit includes identification of the project and the stream, a description of the power plant, characteristics of the reservoir, the annual gross generation at the hydroelectric plant (energy from pumped storage operation must be separately identified), the investment costs, and the annual costs (including information on allocation of these costs among the project functions). The list of information the owner of the downstream plant is required to submit includes identification of the project and the stream, a description of the power plant, and information on the generation at the plant.

The rule notes that these lists of information are not exhaustive and that the Commission may require information in addition to the data

submission requirements specified.[28] The rule also notes that, for both headwater and downstream owners, if data for the current period are the same as data furnished for a prior period, the data need not be resubmitted if the owner identifies the last period for which the data were reported.

These data requirements differ from the requirements in existing § 11.27 in two ways that will reduce the reporting burden for both headwater and downstream project owners. First and most importantly, the requirement contained in the existing rule to supply complete data for every project for every year has been modified. Once the data items for a variable of the headwater benefits formula become stable, so that the variable becomes a constant, or once a final charge is established prospectively, the Commission will notify the project owner that certain data items are no longer required to be supplied.[29] Second, the existing rule contains a more extensive list of required information, some of which was needed for the critical period method. Many items are therefore deleted in the final rule because the energy gains method does not require such data.

Georgia Power Company and EEI point out that downstream project owners whose charges have not yet been established prospectively need the information to be submitted by the headwater projects on a regular basis in order to estimate their headwater benefits payment liability. The Notice had proposed that such information be submitted only upon request from the Commission. The final rule's provisions for annual data submission until certain conditions are met will allow downstream project owners access to current data on the headwater project.

4. Charges and Payments for Headwater Benefits and Costs

a. *Interim and final charges and procedures for payment.* While the Commission is determining a final charge for a given period of headwater benefits, it may assess an interim charge to recover a portion of the section 10(f) costs until a final charge can be assessed.[30] When a final charge is established for a period for which payment of an interim charge has been made, an adjustment will be made to the final change to reflect the amount paid.

An interim charge assessed for a project undergoing an investigation will be based on an estimate of what the final charge for the period for which an interim charge is assessed will be. If the Commission has ever completed an investigation on the project, it is more likely to have a base of knowledge about the project and the river basin to support an estimate that closely approaches the actual final charge. In that case, the interim charge will be 100 percent of the estimate of what the final charge will be. If no investigation has been completed on the project, an estimate of the final charge is likely to be more tentative, and therefore the interim charge will be 80 percent of the estimated final charge. *See* § 11.17(b)(1).

It may be necessary for the Commission to assess interim charges for a number of years, since many factors may delay the determination of a final charge. For instance, instability in the basin may cause an investigation to be extended for a number of years.

Unless a project was assessed a final charge in the previous year, the Commission will provide all parties with a preliminary assessment of a final charge once it is established. The preliminary assessment will be accompanied by a technical report, and an opportunity for the parties to submit written comments in response to the preliminary assessment will be provided. This written response period replaces the protest period provided in the existing regulations. The preliminary assessment and response period are intended to give parties the time necessary to study the complex calculations involved in certain final charge determinations. If a project was assessed a final charge in the previous year, no preliminary assessment or response period are provided for. If a project has received a final charge that recently, it is unlikely that the data analysis and calculations required to determine a final charge for the subsequent year will be so complex as to require a lengthy period of review. If, on the other hand, a final charge was not assessed for the project the previous year, more time may be needed to review what are likely to be more extensive calculations, particularly those resulting from a recently concluded investigation, and therefore 60 days are allowed to respond to the preliminary assessment. *See* § 11.17(b)(2) and (b)(3).

If a preliminary assessment is provided, the Commission will consider the written responses and will, if appropriate, issue an order for the final charge. If no preliminary assessment is provided, an order for the final charge will be issued as soon as the charge for that year is determined. Any order assessing a charge under the delegated authority in § 375.314 of the Commission's regulations is subject to an appeal under § 385.1902. If it is not a delegated order, it is subject to a petition for rehearing. If the Commission applies a final charge prospectively for a project under § 11.17(b)(5),[31] the order establishing the prospective final charge is subject to appeal or petition for rehearing. If a timely appeal or petition for rehearing is filed, payment under protest should be made to avoid any penalty for failure to pay under § 11.21.[32]

Once the Commission has issued an order establishing a prospective final charge for a project, the Commission will issue a bill annually for the amount of the final charge and for costs.

These procedures for the assessment and payment of charges and procedures for raising objections to assessments differ somewhat from the procedures proposed in the Notice, which closely tracked existing regulations and practice. These changes clarify procedures to assure that parties have sufficient time to study proposed assessments and to prepare well-developed comments that may service to obviate the need for costly and time-consuming appeals and rehearings. These procedural changes also are

[28] MP&L, EEI, and NSP comment that the provision may be interpreted to authorize the Commission to make unduly burdensome data requests. Providing for submission of data in addition to listed data is standard procedure to ensure that Commission staff have the information necessary to fulfill the Commission's mandate. Staff is fully aware of the effort required to provide technical information and will request only information that is necessary for a determination. The alternative to this provision would be to develop a comprehensive list of every conceivable item of information that might be needed and require it to be submitted indefinitely, unnecessarily burdening all parties.

[29] Even though final charges have been set prospectively, the Commission will need certain selective data periodically in order to monitor the river basin to determine if changes have occurred which warrant a new investigation.

[30] "Final charge" and "interim charge" are distinguished in definitions of the final rule at § 11.10(b)(11) and (b)(12). "Final charge" is used to apply to all charges, other than costs of determinations, that are final for a specified period of headwater benefits, including periods in the future.

[31] Final charges established prospectively correspond to charges for "average payments" in the existing regulations and charges for "future payments" in the Notice.

[32] The Notice proposed an interest charge on headwater benefits charges that were unpaid after 30 days from issuance of a bill. This provision is deleted from the final rule. An interest charge on unpaid balances may be appropriate not only for headwater benefits charges, but also for other types of annual charges not addressed in this rule. The Commission, therefore, has decided to withhold the provision from this rule and may consider a general interest charge applicable to all annual charges at a later time.

designed to provide sufficient notice before the bill must be paid of the amount the downstream project owner will be expected to pay.

b. *Payment of determination costs.* The final rule retains the provision proposed in the Notice requiring downstream beneficiaries of a federally-owned headwater project to pay the full cost of determining charges, and downstream beneficiaries of headwater projects owned by Federal licensees or pre-1920 permittees to pay a share of the determination costs in proportion to the benefits received. PG&E states that this provision is inconsistent with section 10(f) of the FPA which requires the "licensees or permittees affected" to pay the determination costs.

Under section 10(f) of the FPA, the cost of the investigation must be borne by the headwater and downstream projects involved, unless the project is owned by the Federal government, and then all of the investigative costs must be borne by the downstream project. This view has been affirmed by the U.S. Courts of Appeals in *South Carolina Electric & Gas Co.* v. *FPC*, 339 F.2d 898 (4th Cir. 1964), and in *Public Service Co. of Colorado* v. *FERC*, 754 F.2d 1555 (10th Cir. 1985). The final rule therefore complies with section 10(f).

F. Additional Issues

1. Estimates of Payments

Redding requests that the Commission add a provision to the rule that would require the Commission to provide for a downstream project a reasonable, accurate estimate of its headwater benefits charge at the time a license is issued. The Commission issues licenses to construct proposed hydroelectric projects. At the time a license is issued, the project is not in operation and information essential to the energy gains calculation, such as annual generation and outages, is not available. Not only is essential data from the downstream project unavailable at the time that project is licensed, but there may be no headwater project in operation. A headwater project may be constructed or become operational subsequent to issuance of a license for a project that will be downstream from it. These factors make it impossible for the Commission to provide an estimate of headwater beneftis payments upon licensing, and the final rule does not contain the requested provision.

However, while the Commission cannot, prior to or at the time of licensing, provide an estimate of future charges, this rules does provide the developer or potential developer with a greater degree of certainty regarding the methodology that will be applied to determine the charges. Moreover, once the downstream project is operational, the project owner will be able to develop its own estimate of its headwater benefits liability by applying the annually submitted data to the HWBEG Model.

2. Relationship of sections 10(e) and 10(f) Charges

The Commission proposed to subtract headwater benefits charges assessed under section 10(f) of the FPA from the annual charge a downstream licensee was assessed under section 10(e) of the FPA for the use of the lands or other property (such as a dam and reservoir) of the United States.[33] All comments addressing this issue supported the proposal as necessary to encourage maximum utilization of hydroelectric generation potential, to avoid a "double charge" for government benefits, or to offset charges anticipated if the annual charges proposed in another Notice that was pending at the time were implemented.[34] Ford Motor Company notes, however, that if a flat rate were established for section 10(e) charges, the need for crediting headwater benefits payments against section 10(e) charges is less clear.

On May 24, 1984, the Commission, in Order No. 379, adopted a graduated flat rate method for calculating section 10(e) charges based on annual generation.[35] This method of calculating section 10(e) charges results in far *lower* charges than anticipated at the time the Notice in this docket was proposed and these industry comments were written. This fact offsets concerns of the industry that crediting section 10(e) dam charges is necessary to encourage maximum hydroelectric development.

EEI, NSP, and Alabama Power Company suggest that imposition of both sections 10(e) and 10(f) charges would amount to imposition of a "double charge." This suggestion, however, fails to recognize that, if both sections 10(e) and 10(f) charges apply, the downstream project is able to realize the benefits of additional power generation not only because of the benefit provided by the upstream project (for which the section 10(f) charges applies), but also because of the use of the Federal dam to develop head (for which the section 10(e) applies). The charges represent benefits received from two distinct investments of taxpayers.

For these reasons, the Commission has deleted from this final rule the proposal for crediting section 10(e) charges by section 10(f) payments.

IV. Regulatory Flexibility Act Certification

The Commission is required by section 603 of the Regulatory Flexibility Act (RFA),[36] to prepare a regulatory flexibility analysis of a rule unless the Commission certifies pursuant to section 605(b) of the RFA that the rule will not have a significant economic impact on a substantial number of small entities.

Of a total of approximately 858 hydroelectric project licenses, only about 60 are for projects downstream from Federal headwater projects, and therefore subject to a Commission determination of headwater benefits payments under this rule or subject to a settlement under which payments must approximate those that would be required if determined by the Commission. Of those 60 downstream projects, some are parties to a coordination agreement, and therefore are excluded from a determination under the rule. Approximately 35 of the 60 are owned by major utilities and are not considered small entities.[37] Small projects that are exempt from the requirements of section 10(f) of the FPA under section 30 of the FPA or section 405 of PURPA, and projects with generating capacity of 1.5 MW or less are not subject to the rule. Thus, this rule would not affect a substantial number of small entities.

Moreover, the economic impact of this rule on those project owners who are affected will not be significant. Use of the energy gains method is likely to result in downstream beneficiaries being apportioned a smaller share of the

[33] A downstream power project would be subject to both section 10(e), 16 U.S.C. 803(e) (1982), annual charges and section 10(f) headwater benefits charges if it used a Federal dam to develop head and also received power benefits from another dam and reservoir upstream. The Notice proposed to decrease the section 10(e) charges by the amount of section 10(f) charges for any year for which section 10(f) charges are assessed and paid, regardless of what year the section 10(f) charges were assessed.

[34] Notice of Proposed Rulemaking, Annual Charges for Use of Government Dams and Other Structures Under Part I of the Federal Power Act, 48 FR 15134 (April 7, 1983).

[35] 18 CFR 11.22 (1985).

[36] 5 U.S.C. 601–612 (1982).

[37] 5 U.S.C. 601(d) citing to section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also* SBA's Small Business Size Standards, 13 CFR Part 121 (1985).

section 10(f) cost than does the prevailing value method. In any case, the cap provided for in § 11.11(b)(5) will limit final charges to no more than 85 percent of the value of the energy gains. Therefore, any change in headwater benefits liability will, in most cases, be a decrease.

The rule may result in lower headwater benefits receipts for headwater projects. However, the rule provides that Commission determinations under this rule, or payments under settlement that approximate those that would result from an energy gains determination, are required only for benefits from Federal headwater projects. Such projects are not small entities.

The rule will reduce the uncertainty of downstream beneficiaries regarding what method and procedures the Commission will use in assessing headwater benefits and is expected to save resources now spent by those entities on individual hearings.

V. Paperwork Reduction Act Statement and Effective Date

The information collection provisions in this rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982) and OMB's regulations, 5 CFR 1320.13 (1984). Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. (Attention: Janet Oakley, (202) 357–5771).

This rule will be effective September 16, 1986.

List of Subjects

18 CFR Parts 11 and 13

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority, delegations (government agencies).

In consideration of the foregoing, the Commission amends Parts 11, 13, and 375, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. In Part 11, the Table of Contents is revised to read as follows:

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

Subpart A—Charges for Costs of Administration, Use of Tribal Lands and Other Government Lands, and Use of Government Dams

Sec.

11.1 Costs of administration.
11.2 Use of government lands.
11.3 Use of government dams, excluding pumped storage projects.
11.4 Use of government dams for pumped storage projects, and use of tribal lands.
11.5 Exemption of minor projects.
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11.7 Effective date.
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Subpart B—Charges for Headwater Benefits

11.10 General provision; waiver and exemption; definitions.
11.11 Energy gains method of determining headwater benefits charges.
11.12 Determination of section 10(f) costs.
11.13 Energy gains calculations.
11.14 Procedures for establishing charges without an energy gains investigation.
11.15 Procedures for determining charges by energy gains investigations.
11.16 Filing requirements.
11.17 Procedures for payment of charges and costs.

Subpart C—General Procedures

11.20 Time for payment.
11.21 Penalties.

2. The authority citation for Part 11 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12,009, 3 CFR 142 (1978).

3. Part 11 is amended by redesignating §§ 11.20 through 11.25 as §§ 11.1 through 11.6, respectively, by revising the titles to redesignated §§ 11.3 and 11.4, by redesignating § 11.29 as § 11.7, by redesignating § 11.30 as § 11.8, by designating newly redesignated §§ 11.1 through 11.8 as Subpart A, by removing §§ 11.26 through §§ 11.28, 11.31 and 11.32 by revising newly redesignated §§ 11.7 and 11.8, and by adding a new Subpart B (§§ 11.10 through 11.16) and a new Subpart C (§§ 11.20 and 11.21), to read as follows:

Subpart A—Charges for Costs of Administration, Use of Tribal Lands and Other Government Lands, and Use of Government Dams

§ 11.1 Costs of administration.

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§ 11.2 Use of government lands.

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§ 11.3 Use of government dams, excluding pumped storage projects.

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§ 11.4 Use of government dams for pumped storage projects, and use of tribal lands.

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§ 11.5 Exemption of minor projects.

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§ 11.06 Exemption of state and municipal licensees.

* * * * *

§ 11.7 Effective date.

All annual charges imposed under this subpart will be computed beginning on the effective date of the license unless some other date is fixed in the license.

§ 11.8 Adjustment of annual charges.

All annual charges imposed under this subpart continue in effect as fixed unless changed as authorized by law.

Subpart B—Charges for Headwater Benefits

§ 11.10 General provision; waiver and exemptions; definitions.

(a) *Headwater benefits charges.* (1) The Commission will assess or approve charges under this subpart for direct benefits derived from headwater projects constructed by the United States, a licensee, or a pre-1920 permittee. Charges under this subpart will amount to an equitable part of the annual costs of interest, maintenance, and depreciation expenses of such headwater projects and the costs to the Commission of determining headwater benefits charges. Except as provided in paragraph (b) of this section, the owner of any non-Federal downstream project that receives headwater benefits must pay charges determined under this subpart.

(2) Headwater benefits are the additional electric generation at a downstream project that results from regulation of the flow of the river by the headwater, or upstream, project, usually by increasing or decreasing the release of water from a storage reservoir.

(b) *Waiver and exemptions.* The owner of a downstream project with installed generating capacity of 1.5 MW (2000 horsepower) or less or for which the Commission has granted an exemption from section 10(f) is not required to pay headwater benefits charges.

(c) *Definitions.* For purposes of this subpart:

(1) "Energy gains" means the difference between the number of kilowatt-hours of energy produced at a

downstream project with the headwater project and that which would be produced without the headwater project.

(2) "Generation" means gross generation of electricity at a hydroelectric project, including generation needed for station use or the equivalent for direct drive units, measured in kilowatt-hours. It does not include energy used for or derived from pumping in a pumped storage facility.

(3) "Headwater project costs" means the total costs of an upstream project constructed by the United States, a licensee, or pre-1920 permittee.

(4) "Separable cost" means the difference between the cost of a multiple-function headwater project with and without any particular function.

(5) "Remaining benefits" means the difference between the separable cost of a specific function in a multiple-function project and the lesser or:

(i) the benefits of that function in the project, as determined by the responsible Federal agency at the time the project or function was authorized; or

(ii) the cost of the most likely alternative single-function project providing the same benefits.

(6) "Joint-use cost" means the difference between the total project cost and the total separable costs. Joint-use costs are allocated among the project functions according to each function's percentage of the total remaining benefits.

(7) "Specific power cost" means that portion of the headwater project costs that is directly attributable to the function of power generation at the headwater project, including, but not limited to, the cost of the electric generators, turbines, penstocks, and substation.

(8) "Joint-use power cost" means the portion of the joint-use cost allocated to the power function of the project.

(9) "Section 10(f) costs" means the annual interest, depreciation, and maintenance expense portion of the joint-use power cost, including costs of non-power functions required by statute to be paid by revenues from the power function.

(10) "Party" means:

(i) The owner of a non-Federal downstream hydroelectric project which is directly benefited by a headwater project constructed by the United States, a licensee, or a pre-1920 permittee;

(ii) The owner of a headwater project constructed by the United States, a licensee, or a pre-1920 permittee;

(iii) An operating agency of, or an agency marketing power from, a headwater project constructed by the United States; or

(iv) Any party, as defined in § 385.102(c) of this chapter.

(11) "Final charge" means a charge assessed on an annual basis to recover section 10(f) costs and which represents the final determination of the charge for the period for which headwater benefits are assessed. Final charges may be established retroactively, to finalize an interim charge, or prospectively.

(12) "Interim charge" means a charge assessed to recover section 10(f) costs for a specified period of headwater benefits pending determination of a final charge for that period.

(13) "Investment cost" means the sum of:

(i) Project construction costs, including cost of land, labor and materials, cost of pre- and post-authorization investigations, and cost of engineering, supervision, and administration during construction of the project; and

(ii) Interest during construction.

§ 11.11 Energy gains method of determining headwater benefits charges.

(a) *Applicability.* This section applies to any determination of headwater benefits charges, unless:

(1) The Commission has approved headwater benefits charges pursuant to an existing coordination agreement among the parties;

(2) The parties reach, and the Commission approves, a settlement with respect to headwater benefits charges, pursuant to § 11.14(a) of this subpart; or

(3) Charges may be assessed under § 11.14(b).

(b) *General rule*—(1) *Summary.* Except as provided in paragraph (b)(3) of this section, a headwater benefits charge for a downstream project is determined under this subpart by apportioning the section 10(f) costs of the headwater project among the headwater project and all downstream projects that are not exempt from or waived from headwater benefits charges under § 11.10(b) of this chapter, according to each project's share of the total energy benefits to those projects resulting from the headwater project.

(2) *Calculation; headwater benefits formula.* The annual headwater benefits charge for a downstream project is derived by multiplying the section 10(f) cost by the ratio of the energy gains received by the downstream project to the sum of total energy gains received by all downstream projects (except those projects specified in § 11.10(b) of this chapter) plus the energy generated at the headwater project that is assigned to the joint-use power cost, as follows:

$$P = C_p \times \frac{E_n}{E_j + E_d}$$

In which:

P = annual payment to be made for headwater benefits received by a downstream project,

C_p = annual section 10(f) cost of the headwater project,

E_n = annual energy gains received at a downstream project, or group of projects if owned by one entity,

E_d = annual energy gains received at all downstream projects (except those specified in § 11.10(b) of this chapter), and

E_j = portion of the annual energy generated at the headwater project assigned to the joint-use power cost.

(3) If power generation is not a function of the headwater project, section 10(f) costs will be apportioned only among the downstream projects.

(4) If the headwater project is constructed after the downstream project, liability for headwater benefits charges will accrue beginning on the day on which any energy losses at the downstream project due to filling the headwater reservoir have been offset by subsequent energy gains. If the headwater project is constructed prior to the downstream project, liability for headwater benefits charges will accrue beginning on the day on which benefits are first realized by the downstream project.

(5) No final charge assessed by the Commission under this subpart may exceed 85 percent of the value of the energy gains. If a party demonstrates, within the time specified in § 11.17(b)(3) for response to a preliminary assessment, that any final charge assessed under this subpart, not including the cost of the investigation assessed under § 11.17(c), exceeds 85 percent of the value of the energy gains provided to the downstream project for the period for which the charge is assessed, the Commission will reduce the charge to not more than 85 percent of the value. For purposes of this paragraph, the "value of the energy gains" is the cost of obtaining an equivalent amount of electricity from the most likely alternative source during the period for which the charge is assessed.

§ 11.12 Determination of section 10(f) costs.

(a) *for non-Federal headwater projects.* If the headwater project was constructed by a licensee or pre-1920 permittee and a party requests the Commission to determine charges, the Commission will determine on a case-

by-case basis what portion of the annual interest, maintenance, and depreciation costs of the headwater project constitutes the section 10(f) costs, for purposes of this subpart.

(b) *For Federal headwater projects.* (1) If the headwater project was constructed or is operated by the United States, and the Commission has not approved a settlement between the downstream project owner and the headwater project owner, the section 10(f) cost will be determined by deriving, from information provided by the headwater project owner pursuant to § 11.16 of this subpart, the joint-use power cost and the portion of the annual joint-use power cost that represents the interest, maintenance, and depreciation costs of the project.

(2) If power is not an authorized function of the headwater project, the section 10(f) cost is the annual interest, maintenance, and depreciation portion of the headwater project costs designated as the joint-use power cost, derived by deeming a power function at the project. The value of the benefits assigned to the deemed power function, for purposes of determining the value of remaining benefits of the joint-use power cost, is the total value of downstream energy gains included in the headwater benefits formula.

(3) For purposes of this paragraph, "total value of downstream energy gains" means the lesser of:

(i) The cost of generating an equivalent amount of electricity at the most likely alternative facility at the time the headwater project became operational; or

(ii) The incremental cost of installing electrical generation at the headwater project at the time the project became operational.

§ 11.13 Energy gains calculations.

(a) *Energy gains at a downstream project.* (1) Energy gains at a downstream project are determined by simulating operation of the downstream project with and without the effects of the headwater project. Except for determinations which are not complex or in which headwater benefits are expected to be small, calculations will be made by application of the Headwater Benefits Energy Gains Model, as presented in *The Headwater Benefits Energy Gains (HWBEG) Model Description and Users Manual*, which is available for the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

(2) If more than one headwater project provide energy gains to a downstream project, the energy gains at the downstream project are attributed to the headwater projects according to the time sequence of commencement of operation in which each headwater project provided energy gains at the downstream project, by:

(i) Crediting the headwater project that is first in time with the amount of energy gains that it provided to the downstream project prior to operation of the headwater project that is next in time; and

(ii) Crediting any subsequent headwater project with the additional increment of energy gains provided by it to the downstream project.

(3) Annual energy losses at a downstream project, or group of projects owned by the same entity, that are attributable to the headwater project will be subtracted from energy gains for the same annual period at the downstream project or group of projects. A net loss in one calendar year will be subtracted from net gains in subsequent years until no net loss remains.

(b) *Energy generated at the headwater project.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the portion of the total annual energy generation at the headwater project that is to be attributed to the joint-use power cost is derived by multiplying the total annual generation at the headwater project and the ratio of the project investment cost assigned to the joint-use power cost to the sum of the investment cost assigned to both the specific power cost and the joint-use power cost of the headwater project, as follows:

$$E_j = E \times \frac{C_j}{C_s + C_j}$$

In which:

E_j = annual energy generated at the headwater project to be attributed to the joint-use power cost,

E = total annual generation at the headwater project,

C_j = project investment costs assigned to the joint-use power cost, and

C_s = project investment costs assigned to specific power costs.

(2) If the headwater project contains a pumped storage facility, calculation of the portion of the total annual energy generation at the headwater project that is attributable to the joint-use power cost will be determined on a case-by-case basis.

(3) If no power is generated at the headwater project, the amount of energy attributable to the joint-use power cost under this section is the total of all downstream energy gains included in the headwater benefits formula.

§ 11.14 Procedures for establishing charges without an energy gains investigation.

(a) *Settlements.* (1) Owners of downstream and headwater projects subject to this subpart may negotiate a settlement for headwater benefits charges. Settlements must be filed with the Commission for its approval, according to the provisions of § 385.602.

(2) If the headwater project is a Federal project, any settlement under this section must result in headwater benefits payments that approximate those that would result under the energy gains method.

(b) *Continuation of previous headwater benefits determinations.* (1) For any downstream project being assessed headwater benefit charges on or before [insert effective date of rule], the Commission will continue to assess charges to that project on the same basis until changes occur in the river basin, including hydrology or project development, that affect headwater benefits.

(2) Any procedures that apply to § 11.17(b)(5) of this subpart will apply to any prospectively fixed charges that are continued under this paragraph.

§ 11.15 Procedures for determining charges by energy gains investigation.

(a) *Purpose of investigations; limitation.* Except as permitted under § 11.14, the Commission will conduct an investigation to obtain information for establishing headwater benefits charges under this subpart. The Commission will investigate and determine charges for a project downstream from a non-Federal headwater project only if the parties are unable to agree to a settlement and one of the parties requests the Commission to determine charges.

(b) *Notification.* The Commission will notify each downstream project owner and each headwater project owner when it initiates an investigation under this section, and the period of project operations to be studied will be specified. An investigation will continue until a final charge has been established for all years studied in the investigation.

(c) *Jurisdictional objections.* If any project owner wishes to object to the assessment of a headwater benefits charge on jurisdictional grounds, such objection must:

(1) Be raised within 30 days after the notice of the investigation is issued; and

(2) State in detail the grounds for its objection.

(d) *Investigations.* (1) For any downstream project for which a final charge pursuant to an investigation has never been established, the Commission will conduct an initial investigation to determine a final charge.

(2) The Commission may, for good cause shown by a party or on its own motion, initiate a new investigation of a river basin to determine whether, because of any change in the hydrology, project development, or other characteristics of the river basin that effects headwater benefits, it should:

(i) Establish a new final charge to replace a final charge previously established under § 11.17(b)(5); or

(ii) Revise any variable of the headwater benefits formula that has become a constant in calculating a final charge.

(3) *Scope of investigations.* (i) The Commission will establish a final charge pursuant to an investigation based on information available to the Commission through the annual data submission requirements of § 11.16, if such information is adequate to establish a reasonably accurate final charge.

(ii) If the information available to the Commission is not sufficient to provide a reasonably accurate calculation of the final charge, the Commission will request additional data and conduct any studies, including studies of the hydrology of the river basin and project operations, that it determines necessary to establish the charge.

§ 11.16 Filing requirements.

(a) *Applicability.* (1) Any party subject to a headwater benefits determination under this subpart must supply project-specific data, in accordance with this section, by February 1 of each year for data from the preceding calendar year.

(2) Within 30 days of notice of initiation of an investigation under § 11.15, a party must supply project-specific data, in accordance with this section, for the years specified in the notice.

(b) *Data required from owner of the headwater project.* The owner of any headwater project constructed by the United States, a licensee, or a pre-1920 permittee that is upstream from a non-Federal hydroelectric project must submit the following:

(1) Name and location of the headwater project, including the name of the stream on which it is located.

(2) The total nameplate rating of installed generating capacity of the project, expressed in kilowatts, with the portion of total capacity that represents pumped storage generating capacity separately designated.

(3) A description of the total storage capacity of the reservoir and allocation of storage capacity to each of its functions, such as dead storage, power storage, irrigation storage, and flood control storage. Identification, by reservoir elevation, of the portion of the reservoir assigned to each of its respective storage functions.

(4) An elevation-capacity curve, or a tabulation of reservoir pool elevations with corresponding reservoir storage capacities.

(5) A copy of rule curves, coordination contracts, agreements, or other relevant data governing the release of water from the reservoir, including a separate statement of their effective dates.

(6) A curve or tabulation showing actual reservoir pool elevations throughout the immediately preceding calendar year and for each year included in an investigation.

(7) The total annual gross generation of the hydroelectric plant in kilowatt-hours, not including energy from pumped storage operation.

(8) The total number of kilowatt-hours of energy produced from pumped storage operation.

(9) The investigation costs attributed to the power generation function of the project as of the close of the calendar year or at a specified date during the year, categorized according to that portion that is attributed to the specific power costs, and that portion that is attributed to the joint-use power costs.

(10) The portion of the joint-use power cost, and other costs required by law to be allocated to joint-use power cost, each item shown separately, that are attributable to the annual costs of interest, maintenance, and depreciation, identifying the annual interest rate and the method used to compute the depreciation charge, or the interest rate and period used to compute amortization if used in lieu of depreciation, including any differing interest rates used for major replacements or rehabilitation.

(c) *Data required from owners of downstream projects.* The owner of any hydroelectric project which is downstream from a headwater project constructed by the United States, a licensee, or pre-1920 permittee must submit the following:

(1) Name and location of the downstream project, including the name of the stream on which it is located.

(2) Total nameplate rating of the installed generating capacity of the plant, expressed in kilowatts, with the portion of total capacity that represents pumped storage generating capacity separately designated.

(3) Record of daily gross generation, not including energy used for pumped storage, and any unit outage which may have occurred.

(4) The total number of kilowatt-hours of energy produced from pumped storage operation.

(d) *Abbreviated data submissions.* (1) For those items in paragraphs (b) and (c) of this section in which data for the current period are the same as data furnished for a prior period, the data need not be resubmitted if the owner identifies the last period for which the data were reported.

(2) The Commission will notify the project owner that certain data items in paragraphs (b) and (c) are no longer required to be submitted annually if:

(i) A variable in the headwater benefits formula has become a constant; or

(ii) A prospective final charge, as described in § 11.17(b)(5), has been established.

(e) *Additional data.* Owners of headwater projects or downstream projects must furnish any additional data required by the Commission staff under paragraph (a) of this section and may provide other data which they consider relevant.

§ 11.17 Procedures for payment of charges and costs.

(a) *Payment for benefits from a non-Federal headwater project.* Any billing procedures and payments determined between a non-Federal headwater project owner and a downstream project owner will occur according to the agreement of those parties.

(b) *Charges and payment for benefits from a Federal headwater project.*

(1) *Interim charges.* (i) If the Commission has not established a final charge and an investigation is pending, the Commission will issue a downstream project owner a bill for the interim charge and costs and a staff report explaining the calculation of the interim charge.

(ii) An interim charge will be a percentage of the estimate by the Commission staff of what the final charge will be, as follows:

(A) 100 percent of the estimated final charge if the Commission previously has completed an investigation of the project for which it is assessed; or

(B) 80 percent of the estimated final charge if the Commission has not completed an investigation of the project for which it is assessed.

(iii) When a final charge is established for a period for which an interim charge was paid, the Commission will apply the amount paid to the final charge.

(2) *Preliminary assessment of a final charge.* Unless the project owner was assessed a final charge in the previous year, the Commission will issue to the downstream project owner a preliminary assessment of any final charge when it is determined. A staff technical report explaining the basis of the assessment will be enclosed with the preliminary assessment. Copies of the preliminary assessment will be mailed to all parties.

(3) *Opportunity to respond.* After issuance of a preliminary assessment of a final charge, parties may respond in writing within 60 days after the preliminary assessment.

(4) *Order and bill.* (i) After the opportunity for written response by the parties to the preliminary assessment of a final charge, the Commission will issue to the downstream project owner an order establishing the final charge. Copies of the order will be mailed to all parties. A bill will be issued for the amount of the final charge and costs.

(ii) If a final charge is not established prospectively under paragraph (b)(5) of this section, the Commission will issue an order and a bill for the final charge and costs each year until prospective final charges are established. After the Commission issues an order establishing a prospective final charge, a bill will be issued annually for the amount of the final charge and costs.

(5) *Prospective final charges.* When the Commission determines that historical data, including the hydrology, development, and other characteristics of the river basin, demonstrate sufficient stability to project average energy gains and section 10(f) costs, the Commission will issue to the downstream project owner an order establishing the final charge from future years. Copies of the order will be mailed to all parties. The prospective final charge will remain in effect until a new investigation is initiated under § 11.15(d)(2).

(6) *Payment under protest.* Any payment of a final charge required by this section may be made under protest if a party is also appealing the final charge pursuant to § 385.1902, or requesting rehearing. If payment is made under protest, that party will avoid any penalty for failure to pay under § 11.21.

(7) *Accounting for payments pending appeal or rehearing.* The Commission will retain any payment received for final charges from bills issued pursuant to this section in a special account. No disbursements to the U.S. Treasury will be made from the account until 31 days after the bill is issued. If an appeal under § 385.1902 or a request for rehearing is filed by any party, no disbursements to the U.S. Treasury will be made until final disposition of the appeal or request for rehearing.

(c) *Charges for costs of determinations of headwater benefits charges.* (1) Any owner of a downstream project that benefits from a Federal headwater project must pay to the United States the cost of making any investigation, study, or determination relating to the assessment of the relevant headwater benefits charge under this subpart.

(2) If any owner of a headwater or downstream project requests that the Commission determine headwater benefits charges for benefits provided by non-Federal headwater projects, the headwater project owners must pay a pro rata share of 50 percent of the cost of making the investigation and determination, in proportion to the benefits provided by their projects, and the downstream project owners must pay a pro rata share of the remaining 50 percent in proportion to the energy gains received by their projects.

(3) Any charge assessed under this paragraph is separate from and will be added to, any final or interim charge under this subpart.

Subpart C—General Procedures

§ 11.20 Time and payment.

Annual charges must be paid within 45 days of rendition of a bill by the Commission, except that annual charges for headwater benefits must be paid within 30 days of rendition of a bill.

§ 11.21 Penalties.

If any person fails to pay annual charges within the periods specified in § 11.20, a penalty of 5 percent of the total delinquent amount will be assessed and added to the total charges for the first month or part of month in which payment is delinquent. An additional penalty of 3 percent for each full month thereafter will be assessed until the charges and penalties are satisfied in accordance with law. The Commission may, by order, waive any penalty imposed by this subsection, for good cause shown.

PART 13—[REMOVED]

4. 18 CFR Part 13 is removed.

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

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

6. In § 375.314, the introductory text and paragraph (q) introductory text are republished and paragraphs (q)(1) and (y) are revised to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

The Commission authorizes the Director of the Office of Hydropower Licensing or the Director's designee to:

* * * * *

(q) Take appropriate action on:

(1) Uncontested settlements involving headwater benefits.

* * * * *

(y) Determine and assess payments for headwater benefits.

* * * * *

[FR Doc. 86–14930 Filed 7–2–86; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 86–123]

Customs Regulations Amendment Adding Austria to List of Countries Whose Pleasure Vessels Are Entitled To Be Issued U.S. Cruising Licenses

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Austria to the list of countries whose pleasure vessels may be issued U.S. cruising licenses. Customs has been informed that yachts used and employed exclusively as pleasure vessels belonging to any resident of the U.S. are allowed to arrive at and depart from Austrian ports and cruise in the waters of Austria without being subjected to formal entry and clearance procedures. Therefore, Customs is extending reciprocal privileges to Austrian-flag pleasure vessels.

EFFECTIVE DATE: These privileges became effective for Austria on April 21, 1986.

FOR FURTHER INFORMATION CONTACT: Donald H. Reusch, Carriers, Drawback and Bonds Division (202–566–5706), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

Section 4.94(a), Customs Regulations (19 CFR 4.94(a)), provided that U.S.

vessels documented with a pleasure license endorsement, used exclusively for pleasure, not engaged in any trade, and not violating the customs or navigation laws of the U.S. may proceed from port to port in the U.S. or to foreign ports without entering and clearing, as long as they have not visited hovering vessels. When returning from a foreign port or place, such licensed U.S. pleasure vessels are required to report their arrival pursuant to § 4.2, Customs Regulations (19 CFR 4.2).

Generally, foreign-flag yachts entering the U.S. are required to comply with the laws applicable for foreign vessels arriving at, departing from, and proceeding between ports of the U.S. However, as provided in § 4.94(b), Customs Regulations (19 CFR 4.94(b)), pleasure vessels from certain countries may be issued cruising licenses which exempt them from formal entry and clearance procedures (e.g., filing manifests, obtaining permits to proceed and paying entry and clearance fees). Upon arrival at each port of entry in the U.S., the master shall report the fact of arrival to the appropriate Customs officer. Yachts or pleasure vessels not carrying passengers or merchandise in trade are exempt from paying tonnage tax and light money in any case pursuant to § 4.21(b)(5), Customs Regulations (19 CFR 4.21(b)(5)). Cruising licenses are available to pleasure vessels of countries which extend reciprocal privileges to U.S. pleasure vessels. A list of these countries is set forth in § 4.94(b).

By diplomatic note dated April 14, 1986, the Austrian Embassy in Washington, DC, informed the Department of State that the Government of Austria permits yachts used and employed exclusively as pleasure vessels and belonging to any resident of the U.S., to arrive at and depart from ports of Austria and cruise the waters of Austria without entering and clearing Austrian Customs, and without the payment of any charges for entering or clearing, dues, duty per ton, tonnage taxes, or charges for cruising licenses.

The Department of State informed Customs Headquarters by a letter dated May 13, 1986. The Carriers, Drawback and Bonds Division of Customs is of the opinion that satisfactory evidence has been furnished to establish the reciprocity required in § 4.94(b). Therefore, on May 21, 1986, the Director of that division determined that, effective retroactively to April 21, 1986, Austria should be added to the list of countries set forth in § 4.94(b).

By virtue of the authority vested in the President by section 5 of the Act of May 28, 1908, 35 Stat. 425, as amended (46 U.S.C. 104), the President has delegated the authority to issue these cruising licenses to the Secretary of the Treasury by E.O. 10289, September 17, 1951. By Treasury Department Order 165–25, the Secretary of the Treasury delegated authority to the Commissioner of Customs to prescribe regulations relating to § 4.94(b) and other sections of the Customs Regulations relating to lists of countries entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82–201), dated October 13, 1982, the Commissioner delegated authority to amend this section to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then redelegated it to the Director, Regulations Control and Disclosure Law Division.

Finding

On the basis of the information received from the Government of Austria and the Department of State, as described above, it has been determined that the U.S. is in possession of satisfactory evidence regarding the passage of U.S. pleasure vessels through the ports and waters of Austria without their being subjected to formal entry and clearance procedures. Therefore, Austria is added to the list of countries whose pleasure vessels may be issued U.S. cruising licenses.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the majority of the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

The Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a major impact analysis is not required.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs inspection and duties, Imports, Vessels, Yachts.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

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

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 2103.

Section 4.94 also issued under 19 U.S.C. 1433, 1434, 1435, 1441; 46 U.S.C. 91, 104, 313, 314.

§ 4.94 [Amended]

2. Section 4.94(b), Customs Regulations (19 CFR 4.94(b)), is amended by inserting, in appropriate alphabetical order, the word, "Austria", to the list of countries whose yachts or pleasure vessels may be issued U.S. cruising licenses.

Dated: June 25, 1986.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 86–15026 Filed 7–2–86; 8:45 am]

BILLING CODE 4820–02–M

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19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: Customs Service, Treasury.

ACTION: Announcement of interest charged on underpayment or overpayment of custom duties.

SUMMARY: This notice advises the public that the adjusted rate of interests to be charged or paid by Customs on applicable overpayments or underpayments of Customs duties will decrease from 10 to 9 percent on July 1, 1986. This rate is set by the Internal Revenue Service and is subject to change twice a year. It is being published for the convenience of the importing public and Customs personnel. A schedule of rates for prior periods is also included.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Hamilton, Revenue Branch,

National Finance Center, U.S. Customs Service, P.O. Box 68901, Indianapolis, IN 46268 (317) 298–1200.

SUPPLEMENTARY INFORMATION:

Background

By T.D. 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), Customs advised the public that, in order to implement sections 621 and 210 of Pub. L. 98–573, the Trade and Tariff Act of 1984, interest on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established in 26 U.S.C. 6621 and 6622. This determination covers antidumping and countervailing duty payments, and increased or additional Customs duties determined to be due on a liquidation or reliquidation of an entry. In addition, T.D. 85–93 also stated that it has been determined that a uniform interest payment system should be established and that refunds pursuant to a court determination and payable under 28 U.S.C. 2644, and interest on overpayments and underpayments of estimated excise taxes determined at liquidation shall be assessed at the rate prescribed under 26 U.S.C. 6621 and 6622.

Although T.D. 85–93 stated that the current semiannual interest rate may be obtained from the IRS or any Regional Customs Financial Management Office at any time, Customs received a suggestion that it regularly publish the current interest rate in the *Customs Bulletin* and **Federal Register** for the convenience of the importing public and Customs personnel. Customs agreed that this would be beneficial and has published interest rate notices previously and will continue to publish future notices.

Action

The rate of interest for the period of July 1, 1986–December 31, 1986, is 9 percent. This rate will remain in effect until January 1, 1987, when it is subject to change.

Previous Interest Rates

The following table includes the interest rates applicable to the 6-month periods since July 1, 1984. These are the rates applied to outstanding accounts from the particular periods.

Period	Rate (percent)
July 1, 1984–Dec. 31, 1984	11
Jan. 1, 1985–June 30, 1985	13
July 1, 1985–Dec. 31, 1985	11
Jan. 1, 1986–June 30, 1986	10

Dated: June 26, 1986.

Alfred R. De Angelus,

Acting Commissioner of Customs.

[FR Doc. 86–15025 Filed 7–2–86; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 215, 236 and 886

[Docket No. R–86–1163; FR–1702]

Definition of Income, Rents and Recertification of Family Income for the Rent Supplement and Section 236 Programs

Correction

In FR Doc. 86–13532 beginning on page 21850 in the issue of Monday, June 16, 1986, make the following corrections:

1. On page 21850, in the third column, in the last paragraph, in the last line, "explicitly" was misspelled.

2. On page 21851, in the first column, in the twenty-third line, "extent" was misspelled; in the thirty-second through thirty-fourth lines, remove "By agreeing * * * market rent."; and in the thirty-sixth line, "the funding" should read "the subsidy from being made available at another project. The scarcity of such funding".

3. Also on page 21851, in the first column, in the first complete paragraph, in the ninth line, "rule." should read "rule,".

4. On page 21852, in the first column, in paragraph E, in the sixteenth line, "occupying" was misspelled.

§ 215.1 [Corrected]

5. On page 21854, in the first column, in § 215.1(e), the first line should read, "(e) Child Care Expenses."

6. Also on page 21854, in the third column, in § 215.1(e), in the definition for *"Tenant Rent"*, in the seventh line, "of" should read "or".

§ 215.70 [Corrected]

7. On page 21858, in the second column, in § 215.70(b)(7), in the first line, "or" should read "of".

§ 236.2 [Corrected]

8. On page 21859, in the second column, in § 236.2, in the definition for *"Net Family Assets"*, in the twenty-third line, "twp" should read "two".

BILLING CODE 1505–01–M

24 CFR Parts 812, 813, and 882

[Docket No. R–86–1205; FR–1829]

Shared Housing in the Section 8 Existing Housing Program

Correction

In FR Doc. 86–13126 beginning on page 21300 in the issue of Wednesday, June 11, 1986, make the following corrections:

1. On page 21301, in the third column, in the third complete paragraph, in the seventh line, "subsidized" was misspelled.

2. On page 21303, in the second column, in the third complete paragraph, "PHA's" should read "PHAs' ".

3. On page 21304, in the second column, in the third complete paragraph, in the second line, "for live-in" should read "for a live-in".

4. On page 21306, in the third column, in the second paragraph, in the fourth line from the bottom, "make the" should read "make simpler the".

5. On page 21309, in the second column, in amendatory instruction 13, in the second line, "(g)" should read "(q)".

BILLING CODE 1505–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Exposure to Cotton Dust; Corrections and Information Collection Requirements Approval

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; corrections and information collection requirement approval.

SUMMARY: This notice makes corrections to the final rule for Occupational Exposure to Cotton Dust which appeared in the **Federal Register** on December 13, 1985 (50 FR 51120 and 29 CFR 1910.1043). It also announces that the Office of Management and Budget approved the information collection requirements of that rule on March 14, 1986 and has assigned Control No. 1218–0061.

EFFECTIVE DATE: July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Information and Consumer Affairs, Room N3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone 523–8148.

SUPPLEMENTARY INFORMATION: On December 13, 1985 (50 FR 51120) OSHA published a document titled "Occupational Exposure to Cotton Dust; Final Rule". At the time of publication the information collection requirements of that rule had not been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. On March 14, 1986, the Office of Management and Budget approved the information collection requirements and has assigned them Control No. 1218–0061. Accordingly, the information collection requirements of the cotton dust final rule published December 13, 1985 became effective on March 14, 1986.

It should be noted that all other requirements of the December 13, 1985 rule became effective on February 11, 1986. The December 13, 1985 rule was in the nature of amendments to the final cotton dust rule of June 23, 1978 (43 FR 27350).

In addition there were a number of typographical errors in the December 13, 1985 document preamble and in the 29 CFR 1910.1043 regulatory text. This document corrects all the typographical errors in the regulatory text and those typographical errors in the preamble where correction is needed to make the meaning clearer.

PART 1910—[CORRECTED]

Accordingly, 50 FR 51120–51179 (FR Doc. 85–29293) and 29 CFR 1910.1043 are corrected as follows:

1. On page 51120, second column, the paragraph entitled **"EFFECTIVE DATE"** is corrected to read: **EFFECTIVE DATE:** These amendments take effect February 11, 1986; except for the recordkeeping requirements of § 1910.1043 that have been submitted to the Office of Management and Budget for approval.

Note.—The recordkeeping requirements were approved by OMB and took effect on March 14, 1986, Control No. 1218–0061)."

2. On page 51120, second column, line 56, is corrected to read "publications, Room S–4203, U.S.".

3. On page 51121, column one, line 13 is deleted, and line 14 is corrected to read "1. Ex.; Exhibit number in Docket H–052. Docket H–052 is located".

4. On page 51123, column 3, line 38, is corrected to read "adopted 1 mg/m^3 (1000 ug/m^3) of total".

5. On page 51131, column 3, line 7, the word "that" is corrected to read "than".

6. On page 51131, column 3, line 21, is corrected to read "exposures will not rise above current levels."

7. On page 51132, column 3, line 29, is corrected to read: "specifically designated employees," the need".

8. On page 51132, column 3, line 30, the quotation mark at the end of the sentence is removed.

9. On page 51132, column 3, line 54, "65(a)" is corrected to read "6(a)".

10. On page 51136, column 1, line 21, is corrected to read: "other factors become relevant. The".

11. On page 51147, column 1, line 40, is corrected to read "argument that the whole concept of".

12. On page 51153, column 3, line 8, is corrected to read "the possibility of their use is not eliminated."

13. On page 51156, column 1, line 33, is corrected to read "paragraph (g)(1) of this section to read,".

14. On page 51161, column 2, line 5, is corrected to read "§ 1910.1043 take effect on February 11,".

15. On page 51161, column 2, lines 12–14 are corrected to read "Federal Regulations (1985 edition) subject to the existing stay for".

16. On page 51161, column 2, line 25, is corrected to read "for the amendments with one exception. The one exception".

17. On page 51163, column 2, line 3, is corrected to read "the greatest decrement in FEV_1 among".

18. On page 51163, column 2, line 31, is corrected to read "ability to cause a drop in FEV_1. The".

19. On page 51174, column 2, paragraph (c)(1), line 2, is corrected to read "limits (PEL). (i) The employer shall assure that".

20. On page 51175, column 1, paragraph (e)(1), line 5, the word "exosure" is corrected to read "exposure".

21. On page 51176, column 2, paragraph (h)(2)(iii), line 21, is corrected to read "exposure. The predicted FEV_1 and FVC".

22. On page 51178, column 1, paragraph (m)(2)(ii)(E), line 5, is corrected to read "below 1000 ug/m^3 mean".

23. On page 51178, columns 1 and 2, paragraph (m)(2)(ii)(E), lines 8 and 9, are corrected to read "elutriator or an equivalent instrument with engineering".

24. On page 51178, column 2, paragraph (m)(3), lines 7 and 8, are corrected to read "published in 29 CFR § 1910.1043 as of July 1, 1985 are effective".

25. On page 51178, column 3, paragraph (n)(4), line 2, the word "classes" is corrected to "classed".

26. On page 51178, column 3, paragraph (n)(4)(v), line 3 is corrected to read "contamination of the cotton,".

27. On page 51179, column 3, the parenthetical note on information collection requirements is corrected to read—

"(The information collection requirements contained in this section are approved by the Office of Management and Budget, under Control No. 1218–0061, expiration date December 31, 1988.)".

Signed at Washington, DC, this 27 day of June, 1986.

John A. Pendergrass,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 86–15047 Filed 6–30–86 3:31 pm]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–2996–2]

Revised Motor Vehicle Exhaust Emission Standards for Carbon Monoxide (CO) for 1981 and 1982 Model Year Light-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: This regulation establishes carbon monoxide (CO) emission standards for several 1981 and 1982 model year light-duty vehicles belonging to engine families for which I have granted waivers from the standard otherwise applicable under section 202(b)(5) of the Clean Air Act, 42 U.S.C. 7521(b)(5). This action has the effect of allowing the manufacturer in question to produce the vehicles receiving waivers under the higher CO emission standard of 7.0 grams per vehicle mile (g/mi).

This amendment also makes two corrections to the amended rule previously published in conjunction with my last (nineteenth) CO waiver decision published at 47 FR 44119 (October 6, 1982). In that notice, EPA inadvertently omitted two engine families from the list of engine families previously granted CO waives for model year 1982 set forth in 40 CFR 86.082–8(a)(8)(iii).

EFFECTIVE DATE: August 4, 1986.

FOR FURTHER INFORMATION CONTACT: Mary T. Smith, Chief, Manufacturers Programs Branch, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–2500.

ADDRESSES: Information relevant to this rule, including the document embodying my decision on the waiver application in question, is contained in Public Docket EN–83–06 at the Central Docket Section of the Environmental Protection Agency (EPA), Gallery I, 401 M Street, SW., Washington, DC 20460 and is available

for review between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of the decision document may also be obtained by contacting the Manufacturers Operations Division at the above address.

SUPPLEMENTARY INFORMATION: Section 202(b)(1)(A) of the Clean Air Act ("the Act"), 42 U.S.C. 7521(b)(1)(A), requires that regulations applicable to CO emissions from light-duty vehicles or engines manufactured during or after the 1981 model year shall contain standards which require a reduction of at least 90 percent from CO emission levels allowable under the 1970 model year standards. Regulations implementing this requirement have established a CO standard, often referred to as the "statutory standard" for CO, of 3.4 g/mi.

Section 202(b)(5) of the Act authorizes the Administrator, on application of any manufacturer, to waive the statutory CO standard for the 1981 and 1982 model years for any light-duty vehicle model regarding that which the Administrator can make certain findings. In these cases, the Act requires that I promulgate substitute CO standards for 1981 and 1982 model year light-duty vehicles for which I have granted waivers.

Nissan Motor Co., Ltd. (Nissan) has submitted an application for certain 1981 and 1982 model year light-duty vehicles. The statutory criteria, my determinations regarding the criteria with respect to the vehicle models covered by the waiver applications, and my decision to grant or deny the waiver applications appear in a decision document available in the Public Docket and the Manufacturers Operations Division as stated above. In that decision, I have granted waivers covering the following vehicle models (considered as engine families for purposes of that decision) for the model years in question:

Manufacturer	Engine family	Model year
Nissan Motor Co., Ltd.	75 CID, A-Series	1981, 1982
	85 CID, A-Series	1981, 1982
	91 CID, A-Series	1981, 1982

The basis for my decision is twofold. First, Nissan has established that effective control technology was not available for its engine families in question, considering costs, fuel economy and driveability, at the time of the effective date of the 1981 and 1982 standards. Second, the record indicates that presently there is no effective repair which will enable the vehicles to comply with the statutory standard without unreasonable and unacceptable economic costs.

Once I have decided to grant the waiver applications for the engine families listed above, the Act requires that I simultaneously promulgate regulations adopting emission standards not permitting CO emissions from vehicles of these engine families to exceed 7.0 g/mi. Thus, I am promulgating today standards of 7.0 g/mi for these engine families, as I have done in all previous CO waivers.

The public has been afforded an opportunity to comment on the waiver applications at issue, and I have considered those comments in making the decision which requires the promulgation of this amended rule.

Note.—The Office of Management and Budget (OMB) has exempted this action from the requirements of section 3 of Executive Order 12291.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so as to require a regulatory analysis. The CO emission standards established by this notice directly affect only one major manufacturer and thus do not affect a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

This decision will affect vehicles located in various regions of the United States and, therefore, I determine and find that this decision is of nationwide scope and effect. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

These amendments are issued pursuant to sections 202 and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7521 and 7601(a).

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: June 16, 1986.

Lee M. Thomas,

Administrator.

PART 86—[AMENDED]

For the reasons set forth above, 40 CFR Part 86 is amended as follows:

1. The authority citation for Part 86 continues to read as follows:

Authority: 42 U.S.C. 7521, 7524 and 7601(a)(1), unless otherwise noted.

2. Section 86.081–8 is added to read as follows:

§ 86.081–8 Emissions standards for 1981 light-duty vehicles.

(a)(1) Exhaust emissions from 1981 and later model year light-duty vehicles shall not exceed:

(i) Hydrocarbons. 0.41 grams per vehicle mile (0.255 grams per vehicle kilometer);

(ii) Carbon monoxide. 3.4 grams per vehicle mile (2.11 grams per vehicle kilometer), except that carbon monoxide emissions from light-duty vehicles of the following 1981 model year engine families shall not exceed 7.0 grams per vehicle mile (4.35 grams per vehicle kilometer):

Manufacturer	Engine family
American Motors Corp.	151 CID.
	258 CID.
BL Cars, Ltd.	215 CID.
	326 CID.
Checker Motors Corp.	3.8 liter.
	4.4 liter.
Chrysler Corp.	1.7 liter.
	2.2 liter.
	2.6 liter.
	3.7 liter.
	5.2 liter/2-V.
	5.2 liter/4-V.
Excalibur Motors, Ltd.	305 CID.
Ford Motor Co.	1.3 liter.
	1.6 liter/2C overhead camshaft.
	2.3 liter/turbocharged.
General Motors Corp.	1.6 liter.
	2.8 liter/173 CID-2V.
	3.8 liter/229 CID-2V.
	3.6 liter/231 CID-2V.
	3.8 liter/231 CID-4V turbocharged.
	4.4 liter.
	5.0/5.7 liter.
	6.0 liter/modulated displacement (M-D) (V8-6-4).
Lotus Cars, Ltd.	2.0 liter.
Nissan Motor Co., Ltd.	75 CID, A-series.
	85 CID, A-series.
	91 CID, A-series.
Subaru of America, Inc.	1.6 liter.
	1.8 liter.
Toyo Kogyo Co., Ltd.	91 CID.
	120 CID.
Toyota Motor Company, Ltd.	88.6 CID.

(iii) Oxides of nitrogen. 1.0 grams per vehicle mile, except that: (A) Oxides of nitrogen emissions from 1981 model year light-duty vehicles manufactured by American Motors Corporation shall not exceed 2.0 grams per vehicle mile; (B) oxides of nitrogen emissions from light-

duty diesel vehicles of the following 1981 model year engine families shall not exceed the prescribed levels;

Manufacturer	Engine family	Standard (gpm)
General Motors Corp.	5.7 liter (L)	1.5
	1.8L	1.5
Daimler-Benz AG	2.4L	1.5
	3.0L naturally aspirated (NA).	1.5
	3.0L turbocharged (TC)	1.5
AB Volvo	2.4L-NA	1.5
Peugot	2.3L-TC-XD2S	1.5
Volkswagen AG	1.6L-NA-2250 pounds inertia weight (I.W.).	1.3
	1.6L-NA-2250 I.W	1.4
	2.0L-NA-3000 I.W	1.5
Nissan Motor Company	2.8L	1.5
Isuzu Motors, Ltd	1.8L	1.5
Vehicle Technology, Inc.	4-88 HTA	1.5
	4-92 HTA	1.5
	5-92 HTA	1.5
	6-92 HTA	1.5

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with the procedures outlined in either § 86.109–78 or § 86.110–82.

(b)(1) Fuel evaporative emissions from 1981 and later model year gasoline-fueled light-duty vehicles shall not exceed:

(i) Hydrocarbons. 2.0 grams per test.

(2) The standards set forth in paragraph (b)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1981 and later model year gasoline-fueled light-duty vehicle.

(d)(1) Model year 1981 light-duty vehicles sold for principal use at designated high-altitude locations shall not exceed the following exhaust emission standards when tested at the high-altitude reference point if the manufacturer of such vehicles elects to demonstrate compliance with the high-altitude emission standards.

(i) Hydrocarbons. 0.57 grams per vehicle mile;

(ii) Carbon Monoxide. 7.8 grams per vehicle mile;

(iii) Oxides of nitrogen. 1.0 grams per vehicle mile, except that oxides of nitrogen emissions from 1981 light-duty vehicles manufactured by American Motors Corporation shall not exceed 2.0 grams per vehicle mile.

(2) The standards set forth in paragraph (d)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures.

(e)(1) Fuel evaporative emissions from 1981 model year gasoline-fueled light-duty vehicles sold for principal use at designated high-altitude areas shall not exceed 2.6 grams per test when tested at the high-altitude reference point if the manufacturer of such vehicles elects to demonstrate compliance with the high-altitude emission standards.

(2) The standards set forth in paragraph (e)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

3. Section 86.082–8 is added to read as follows:

§ 86.082–8 Emissions standards for 1982 and later light-duty vehicles.

(a)(1) The standards set forth in paragraphs (a) through (c) of this section shall apply for vehicles sold for principal use at other than designated high-altitude locations. Exhaust emissions from 1982 and later model year light-duty vehicles shall not exceed:

(i) Hydrocarbons. 0.41 grams per vehicle mile (0.255 grams per vehicle kilometer);

(ii) Carbon monoxide. 3.4 grams per vehicle mile (2.11 grams per vehicle kilometer), except that carbon monoxide emissions from light-duty vehicles of the following 1982 model year engine families shall not exceed 7.0 grams per vehicle mile (4.35 grams per vehicle kilometer):

Manufacturer	Engine family
Avanti Motor Corp	5.0 liter
American Motors Corp	151 CID.
	258 CID.
BL Cars, Ltd	215 CID.
	326 CID.
	4.2 liter/fuel injected.
Chrysler Corp	1.6 liter.
	1.7 liter.
	2.2 liter.
	2.6 liter.
	3.7 liter.
	5.2 liter/2-V.
	5.2 liter/4-V.
Excalibur Motor, Ltd	305 CID.
Ford Motor Co	1.6 liter/2V overhead camshaft.
	2.3 liter.
	2.3 liter/turbocharged.
	3.3 liter.
	3.8 liter V-6.
	4.2/5.0 liter.
	5.8 liter.
General Motors Corp	1.6 liter.
	1.8/2.0 liter.
	1.8 liter/fuel injected.
	2.5 liter/throttle body fuel injected.
	2.8 liter/173 CID-2V.
	3.0/3.8 liter/231 CID-2V.
	3.8 liter/turbocharged.
	3.8 liter/229 CID-2V.
	4.1 liter/fuel injected.
	4.4 liter.
	5.0/5.7 liter/fuel injected.
	5.0/5.7 liter.
Lotus Cars, Ltd	2.0 liter.
	2.2 liter.
	2.2 liter/turbocharged.
	4.0 liter.
Nissan Motor Co., Ltd	75 CID A-series.
	85 CID A-series.
	91 CID A-series.
Subaru of America, Inc	1.6 liter.
	1.8 liter.
Toyota Motor Co., Ltd	88.6 CID.
Volkswagen of America	1.7 liter/feed back carburetor.

(iii) Oxides of nitrogen-1.0 grams per vehicle mile, except that: (A) Oxides of nitrogen emissions from 1982 model year light-duty vehicles manufactured by American Motors Corporation shall not exceed 2.0 grams per vehicle mile; (B) oxides of nitrogen emissions from light-duty diesel vehicles of the following 1982 and later model year engine families shall not exceed the prescribed levels:

Manufacturer and engine family	Model years	Standard (g/mi)
Isuzu Motors Ltd.: 1.8L	1982, 1983, 1984	1.5
Renault 2.0L	1982, 1983, 1984	1.5
BL Cars Ltd.:		
2.4L-TC	1983, 1984	1.5
3.6L-TC	1983, 1984	1.5
Chrysler Corp.: 1.9L-NA	1984	1.5
Ford Motor Company:		
2.4L-TC	1984	1.5
TX1	1984	1.5
BMW: 2.4L-TC	1984	1.5
Vehicle Technology, Inc.:		
4-88 HTA	1982, 1983	1.5
4-92 HTA	1982, 1983	1.5
5-92 HTA	1982, 1983	1.5
6-92 HTA	1982, 1983	1.5
Toyo Kogyo Co., Ltd.: TXI	1984	1.5
American Motors Corp.:		
1.6L	1984	1.5
Toyota Motor Corp.:		
1.8L-NA	1984	1.5
1.8L-TC	1984	1.5
General Motors Corp:		
1.8L Liter (L)	1982, 1983, 1984	1.5
4.3L	1982, 1983, 1984	1.5
5.7L	1982, 1983, 1984	1.5
EF-C	1983, 1984	1.5
Daimler-Benz AG:		
2.0L	1984	1.5
2.4L-Naturally aspirated (NA)	1982, 1983, 1984	1.25
3.0L-NA	1982	1.5
3.0L-turbocharge (TC)	1982, 1983, 1984	1.5
AB Volvo:		
2.4L-NA	1982, 1983, 1984	1.5
2.4L-TC	1983, 1984	1.5
Peugeot:		
2.3L-TC-XD2S	1982	1.5
XD2S/XD3S-TC	1983, 1984	1.5
2.3L-NA-XD2C	1982, 1983	1.5
1.9L-NA-XUD9	1983, 1984	1.5
Revere Classics: R.C. 300	1982, 1983, 1984	1.5
Volkswagen AG:		
1.6L-NA-2250 pound inertia weight class I.W.	1982, 1983, 1984	1.5
1.6L-TC-2250 I.W.	1982, 1983, 1984	1.5
1.6L-TC-2500 and 2750 I.W.	1982, 1983, 1984	1.5
1.6L-TC-2500 and 2750 I.W.	1982, 1983, 1984	1.5
2.0L-NA	1982, 1983, 1984	1.5
2.0L-TC	1982, 1983, 1984	1.5
Nissan Motor Company:		
2.8L	1982, 1983	1.5
XM1	1983, 1984	1.5

(iv) Particulate emissions (diesels only). 0.60 gram per vehicle mile (0.373 gram per vehicle kilometer).

(2) The standards set forth in paragraph (a)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part and measured and calculated in accordance with those procedures.

(b)(1) Fuel evaporative emissions from 1982 and later model year gasoline-fueled light-duty vehicles shall not exceed:

(i) Hydrocarbons. 2.0 grams per test.

(2) The standards set forth in paragraph (b)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in a Subpart B of this part and measured in accordance with those procedures.

(c) No crankcase emissions shall be discharged into the ambient atmosphere from any 1982 and later model year gasoline-fueled light-duty vehicle.

(d)(1) Model year 1982 and later light-duty vehicles sold for principal use at a designated high-altitude location shall be capable of meeting the following exhaust emission standards when tested under high-altitude conditions.

(i) Hydrocarbons. 0.57 grams per vehicle mile (0.35 grams per vehicle kilometer).

(ii) Carbon monoxide. 7.8 grams per vehicle mile (4.8 grams per vehicle kilometer), except that carbon monoxide emissions from 1982 model year light-duty vehicles which are specifically listed in paragraph (a)(1)(ii) of this section shall not exceed 11 grams per vehicle mile (6.8 grams per vehicle kilometer).

(iii) Oxides of nitrogen. The standards in paragraph (a)(1)(iii) of this section apply.

(2) The standards set forth in paragraph (d)(1) of this section refer to the exhaust emitted over a driving schedule as set forth in Subpart B of this part measured and calculated in accordance with those procedures.

(e)(1) Fuel evaporative emissions from 1982 and later model year gasoline-fueled light-duty vehicles sold for principal use at designated high-altitude locations shall not exceed 2.6 grams per test when tested under high-altitude conditions.

(2) The standards set forth in paragraph (e)(1) of this section refers to a composite sample of the fuel evaporative emissions collected under the conditions set forth in Subpart B of this part and measured in accordance with those procedures.

(f) No crankcase emissions shall be discharged into the ambient atmosphere from any 1982 and later model year gasoline-fueled light-duty vehicles sold for principal use at designated high-altitude locations.

(g)(1) Any light-duty vehicle that a manufacturer wishes to certify for sale at low altitude must also be capable of meeting high-altitude emissions standards (specified in paragraphs (d) through (f) of this section). The manufacturer may specify vehicle adjustments or modifications to allow the vehicle to meet high-altitude standards but these adjustments or modifications may not alter the vehicle's basic engine, inertia weight class, transmission configuration, and axle ratio.

(i) A manufacturer may certify unique vehicle configurations to meet the high-altitude standards but is not required to certify these vehicle configurations to meet the low-altitude standards.

(ii) Any adjustments or modifications that are recommended to be performed on vehicles to satisfy the requirements of paragraph (g)(1) of this section:

(A) Shall be capable of being effectively performed by commercial repair facilities.

(B) Must be included in the manufacturer's application for certification.

(2) The manufacturer may exempt vehicles from the high-altitude emission standards as set forth in paragraph (d) of this section if the vehicles are not intended for sale at high altitude and if the vehicles fall within the definition of vehicles eligible for exemption. A vehicle shall be considered eligible for exemption if its design parameters [displacement-to-weight ratio (D/W) and engine speed-to-vehicle speed (N/V)] simultaneously fall within the exempted range for that manufacturer for that year. The exempted range is determined according to the following procedure:

(i) The manufacturer shall graphically display the D/W and N/V data of all vehicle configurations it will offer for the model year in question. The axis of the abscissa shall be D/W (where (D) is the engine displacement expressed in cubic centimeters and (W) is the equivalent vehicle test weight expressed in pounds), and the axis of the ordinate shall be N/V (where (N) is the crankshaft speed expressed in revolutions per minute and (V) is the vehicle speed expressed in miles per hour). At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V. The gear selection must be the same for all N/V data points on the manufacturer's graph. For each transmission/axle ratio combination, only the lowest N/V value shall be used in the graphical display.

(ii) The product line is then defined by the equation, $N/V=C(D/W)^{-0.9}$, where the constant, (C), is determined by the requirement that all the vehicle data points either fall on the line or line to upper right of the line as displayed on the graphs.

(iii) The exemption line is then defined by the equation, $N/V=C(0.84D/W)^{-0.9}$, where the constant, (C), is the same as that found paragraph (g)(2)(ii) of this section.

(iv) The exempted range includes all values of N/V and D/W which simultaneously fall to lower left of the exemption line as drawn on the graph.

(3) The sale of a vehicle for principal use at a designated high-altitude location that has been exempted as set forth in paragraph (g)(2) of this section will be considered as violation of section 203(a)(1) of the Clean Air Act.

[FR Doc. 86-15052 Filed 7-2-86; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 141

[OW-FRL-3054-2]

National Primary Drinking Water Regulation; Fluoride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting the final rule promulgating maximum contaminant levels (MCLs) for fluoride in drinking water which was published in the **Federal Register** of April 2, 1986, 51 FR 11396.

FOR FURTHER INFORMATION CONTACT: Joseph A. Cotruvo, Ph.D., Director, Criteria and Standards Division, Office of Drinking Water, (WH-550D), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202/382-7575).

SUPPLEMENTARY INFORMATION: EPA is correcting FR Doc. 86-6843, published on April 2, 1986 (51 FR 11396).

1. On page 11398, column 1, the sentence beginning on line 32 is revised to read as follows:

The last of these methods is being deleted today due to problems in obtaining standard reagents and the absence of data from performance evaluation studies.

2. On page 11406, column 3, the sentence beginning on line 27 is revised to read as follows:

The date is October 2, 1987.

3. On page 11406, column 3, the sentence beginning on line 34 is revised to read as follows:

The date is May 2, 1986.

4. On page 11410, column 3, item 5 is revised to read as follows:

"5. Section 141.23 is amended by revising paragraph (b) and (f)(10), and by adding a new paragraph (g) to read as follows:"

§ 141.23 [Corrected]

5. On page 11410, column 3, Section 141.23 paragraph (f)(10) is corrected by removing and reserving footnotes (2) and (3).

§ 143.5 [Corrected]

6. On page 11412, column 2, Section 143.5, paragraph (a), line 10 is revised to read as follows:

"units annually, (2) all new billing units"

7. On page 11412, column 3, line 5 is revised as follows:

"standard called a Maximum Contaminant"

Dated: June 26, 1986.

William A. Whittington,

Assistant Administrator for Water.

[FR Doc 86-15054 Filed 7-2-86; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-40

[FPMR Amdt. G-79]

Transportation and Traffic Management

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) amends 41 CFR 101-40 by revising, clarifying, and updating certain policies and procedures in the area of transportation and traffic management. Since the publication of FPMR Amendment G-49 on December 30, 1980 (see 45 FR 85741), many changes in policies, procedures, and GSA organization have occurred. This amendment is necessary to incorporate these changes into the regulations and to provide updated guidance to civilian executive agencies in transportation and traffic management requirements.

EFFECTIVE DATE: July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Robert A. Renner or Joseph M. Napoli, Regulations and Policy Division, FTS 557-1256/(703) 557-1256.

SUPPLEMENTARY INFORMATION: Section 201 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481), details GSA's transportation and traffic management responsibilities which include: (a) Prescribing policies and methods of procurement and supply of personal property and nonpersonal services, including related functions such as transportation and traffic management; (b) representing executive agencies in negotiations with carriers or other public utilities before Federal and State regulatory bodies; and (c) providing traffic management services to any Federal agency upon its request.

GSA is responsible, among other things, for providing traffic management guidance to civilian executive agencies.

On March 14, 1983, a draft of proposed changes to 41 CFR Part 101-40 was sent for review and comment to appropriate GSA central and regional offices and to members of the Interagency Committee on Transportation and Traffic Management, representing 32 executive agencies. Subsequently, based upon the comments received from all of the GSA offices and from 23 of the agencies, the draft was revised where feasible and practicable, and a Notice of Proposed Rulemaking (NPRM) to amend Part 101-40 was published in the **Federal Register** of April 11, 1985 (50 FR 14260). A copy of the full text of the NPRM was furnished to each member of the Interagency Advisory Committee on Regulatory Review. In addition, GSA received requests for and furnished copies of the full text to 12 Federal agencies, five motor carriers, and three household carrier associations.

The following summarizes major comments and suggestions to the draft proposals of March 14, 1983, and our determinations and actions taken.

GSA proposed to reduce the thresholds for obtaining GSA freight rate and routing information from 10,000 pounds to 1,000 pounds for surface shipments and from 1,000 pounds to 500 pounds for air shipments. Several agencies objected because of the impact those changes would have on agency programs. GSA reconsidered its proposal and is retaining the current thresholds of 10,000 and 1,000 pounds, respectively.

GSA proposed to increase the thresholds for entering into term contracts for office relocations and into individual contracts for single office moves from $5,000 or less to $10,000 or less. Several commenters suggested that GSA authorize agencies to enter into their own contracts. We have acceded to that request; however, such contracts may continue to be offered in response to an agency's specific request or where otherwise deemed appropriate.

One agency opposed GSA's mandatory rate and routing requirements, and suggested a decentralized transportation system in which GSA would limit the exercise of its authority to prescribing management guidelines while allowing agencies to establish individual transportation management policies and practices. Because the purpose of the mandatory rate and routing requirements is to enable the Government to obtain optimal transportation economies, the suggestion is rejected. Having overall knowledge of current and potential transportation needs and shipping practices, GSA is best able to obtain reduced rates, take advantage of volume shipment discounts, and negotiate with the carrier industry for favorable services.

GSA proposed that all claims for loss or damage to employees' household goods shipped on Government bills of lading be filed by the shipping agency. Two agencies objected, explaining that many civilian agencies lack the personnel and expertise for inspecting damaged property and performing related functions. GSA surveyed several major civilian agencies and determined that policy regarding the filing of household goods loss and damage claims varies from agency to agency. Accordingly, the regulation is amended to give agencies the discretion to either file claims directly with the carriers or assist the owner of the household goods to file claim.

GSA proposed to substitute the term "GBL method" for "actual expense method" to remove any confusion that may arise in describing out-of-pocket moving expenses. There were no comments regarding this change, and the proposal is adopted.

Two agencies expressed difficulty interpreting the regulations which provide that the commuted rate system "shall" be used without consideration being given to the GBL method and that the GBL method "may" be used when the overall costs of administrative expenses, line-haul charges, and charges for accessorial services are anticipated to result in a savings of $100 or more. The interpretation of "shall" and "may" has been controversial since the Administration Expenses Act of 1946 was amended by Public Law 89-516 on July 21, 1966. Prior to this amendment, the law provided that the commuted rate system was the exclusive method of reimbursing civilian Government employees for the movement of their household goods. The legislative history

of the 1966 amendment indicates that the sentence adding the provision that the GBL method "may" be used was to give agencies more administrative flexibility. If there is an anticipated saving of $100 or more, agencies still retain discretion of either authorizing or not authorizing the GBL method. Conversely, in circumstances where the anticipated saving method would be less than $100, only the commuted rate system shall be authorized.

The GSA Office of Acquisition Management and Contract Clearances suggested that the provisions for debarring and suspending commercial carriers be revised to conform to the policies and procedures promulgated by the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, in Policy Letter 82–1, issued June 24, 1982 (47 FR 28854, July 1, 1982). The suggestion is based on the premise that since bills of lading are contracts, agencies should conform to the provisions of Policy Letter 82–1, as implemented at 48 CFR Subpart 9.4. The suggestion is adopted, and subpart 101–40.4 is revised accordingly.

The GSA Regulations and Policy Division (FFY) suggested that subpart 101–40.49 be revised using the numbering system established by GSA at 41 CFR 101–45.49. The suggestion is adopted.

With regard to the NPRM of April 11, 1985, responses were received from two GSA regional offices and one household goods carrier association. The following summarizes major comments and suggestions, and our determination and actions taken.

Both GSA regional offices suggested for various economic and administrative reasons that the thresholds for entering into office relocation term contracts and single office move contracts be raised to $25,000. GSA has decided to remove the threshold and authorize agencies either to enter into their own contracts or request GSA to contract on behalf of the agencies. In addition, GSA may enter into optional use contracts where specific requests have not been received.

The GSA regional office responsible for the management of the GSA household goods program suggested that filing dates for submitting section 10721 quotations (49 U.S.C. 10721) be eliminated to allow GSA flexibility in developing appropriate program procedures. The suggestion is adopted with modification.

Two comments received were from the household goods carrier association. One concerned an agency's acceptance of rate tenders from carriers that do not participate in or qualify under the GSA household goods program. On the premise that use of such carriers constitutes an unauthorized procurement action, it was suggested that the regulations be amended to prohibit payment of transportation invoices from such carriers. Since there appears to be no legal basis for denying payment to a carrier which has performed a service under a bill of lading arrangement, the suggestion is rejected. Agencies have the primary responsibility to adhere to the regulations, and it is only through Government self-policing that this issue is resolved. The second comment addressed the return of GSA Form 3080, Household Goods Shipment Report, which is used to rank participating carriers in the GSA household goods program for their performance and quality of service. It was suggested that the regulations incorporate detailed procedures that would ensure the return of GSA Form 3080. The current GSA computerized cost comparison system features a means whereby GSA can monitor the return of this form. For this reason, there is no need to adopt the suggestion offered.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–40

Freight, Government property management, Moving of household goods, Office relocation, Transportation.

For the reasons set forth in the preamble, 41 CFR Part 101–40 is amended as follows:

PART 101–40—TRANSPORTATION AND TRAFFIC MANAGEMENT

1. The authority citation for Part 101–40 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

2. The table of contents for Part 101–40 is amended by revising and adding the following entries:

101–40.001 Definitions.
101–40.101–1 Freight transportation management assistance.
101–40.103–3 Coastwise transportation.
101–40.110–3 Women-owned business enterprises.
101–40.113 [Reserved]

Subpart 101–40.2—Centralized Household Goods Traffic Management Program

101–40.203–2 The GBL method.
101–40.203–3 The commuted rate system.
101–40.208 Temporary nonuse, debarment, or suspension of household goods carriers.
101–40.303–2 Aggregate delivered costs.

Subpart 101–40.4—Temporary Nonuse, Debarment, and Suspension of Carriers

101–40.401 Policy.
101–40.402 General.
101–40.402–1 [Reserved]
101–40.403 Definitions.
101–40.403–1 [Reserved]
101–40.403–2 [Reserved]
101–40.404 Maintenance of a list of temporary nonuse, debarred, or suspended carriers.
101–40.404–1 Listing temporary nonuse carriers.
101–40.404–2 Listing debarred or suspended carriers.
101–40.404–3 [Reserved]
101–40.404–4 [Reserved]
101–40.404–5 [Reserved]
101–40.405 Agency records.
101–40.406 Treatment to be accorded debarred or suspended carriers.
101–40.407 Agency coordination.
101–40.408 Temporary nonuse.
101–40.408–1 General.
101–40.408–2 Causes for temporary nonuse.
101–40.408–3 Procedures.
101–40.408–4 Period of temporary nonuse.
101–40.409 Debarment.
101–40.409–1 General.
101–40.409–2 Causes for debarment.
101–40.410 Suspension.
101–40.410–1 General.
101–40.410–2 Causes for suspension.
101–40.709 Time limitations for filing claims.

Subpart 101–40.49—Forms

101–40.4900 Scope of subpart.
101–40.4901 Standard forms; availability.
101–40.4901–361–1 Guidelines for preparation of Standard Form 361, Transportation Discrepancy Report (Rev. 3–84).
101–40.4902 GSA forms; availability.
101–40.4903 Optional forms; availability.

3. Section 101–40.000 is revised to read as follows:

§ 101–40.000 Scope of part.

This part prescribes regulations that apply to the freight and household goods transportation and traffic management activities of executive agencies, including any wholly owned Government corporation, not exempted from these regulations to the extent provided in this part or pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as

amended. It also covers arrangements for transportation and related services by bill of lading type commitments. These regulations are designed to ensure that all transportation and traffic management activities will be carried out on the basis most advantageous to the Government in terms of service, economy, and efficiency.

4. Part 101–40 is amended by adding § 101–40.001 to read as follows:

§ 101-40.001 Definitions.

As used in this part,

"GSA Central Office" means the General Services Administration, Federal Supply Service, Office of Customer Support Management, Travel and Transportation Management Division, Washington, DC 20406.

"GSA regional office" means the Customer Service Bureau, Traffic and Travel Services, specified in § 101–40.101–1(a).

SUBPART 101-40.1—GENERAL PROVISIONS

5. Section 101–40.101–1 is revised to read as follows:

§ 101-40.101-1 Freight transportation management assistance.

(a) Executive agencies may obtain traffic management assistance in the transportation of goods (other than of household goods moving from, to, and between foreign countries) by contracting the following General Services Administration regional offices serving agencies located within the jurisdictional areas noted:

Region	Jurisdiction	Address	Telephone
1	CT, ME, MA, NH, RI, VT	GSA, Attn: 1FBT, J.W. McCormack Post Office and Court House, Boston, MA 02109.	FTS 223-2735, COML 617-223-2735.
2	NJ, NY, Puerto Rico, and Virgin Islands.	GSA, Attn: 2FBT, 26 Federal Plaza, New York, NY 10278.	FTS 264-1259, COML 212-264-1259.
3	DE, MD, (Note A), PA, VA, (Note B), WV.	GSA, Attn: 3FBT, 9th & Market Streets, Philadelphia, PA 19107.	FTS 597-1361 COML 215-597-1361.
4	AL, FL, GA, KY, MS, NC, SC, TN.	GSA, Attn: 4FBT, 75 Spring Street SW., Atlanta, GA 30303.	FTS 242-5121 COML 404-221-5121.
5	IL, IN, MI, NM, OH, WI	GSA, Attn: 5FBT, 230 S. Dearborn Street, Chicago, IL 60604.	FTS 353-5375 COML 312-353-5375.
6	IA, KS, MO, NE	GSA, Attn: 6FBT, 1500 E. Bannister Road, Kansas City, MO 64131.	FTS 926-7519, COML 816-926-7519.
7	AR, LA, NM, OK, TX	GSA, Attn: 7FBT, 819 Taylor St., Fort Worth, TX 76102.	FTS 334-2733 COML 817-334-2733.
8	CO, MT, ND, SD, UT, WY	GSA, Attn: 8FBT, Denver Federal Center, Building 41, Denver, CO 80225.	FTS 776-7676, COML 303-236-7676.
9	American Samoa, AZ, CA, GU, HI, NV, Northern Mariana Islands, Pacific Trust Territories.	GSA, Attn: 9FBT, 525 Market Street, San Francisco, CA 94105.	FTS 454-9288, COML 415-974-9288.
10	AK, ID, OR, WA	GSA, Attn: 10FBT, GSA Center, Auburn, WA 98002.	FTS 396-7455, COML 206-931-7455.
NCR	DC, MD, (Note C), VA (Note D).	GSA, Attn: WFBT, 7th & D Streets SW., Washington, DC 20407.	FTS 472-1626, * COML 202-472-1626, # FTS 472-1944, # COML 202-472-1944.

* Other than Household Goods.
# Household goods only.
Note A—Except for those counties under NCR jurisdiction as listed in note C.
Note B—Except for those cities and counties under NCR jurisdiction as listed in note D.
Note C—Counties of Prince Georges and Montgomery only.
Note D—Cities of Alexandria, Fairfax, Manassas, and Manassas Park, and counties of Arlington, Fairfax, Loudoun, and Prince William only.

(b) Executive agencies shall request assistance from the Department of State on shipments of household goods moving from, to, and between foreign countries. The Department of State, if requested, will prepare documents, book shipments, and make all customs arrangements. Assistance on movements originating abroad should be arranged through the nearest Embassy or Consulate. International shipments originating in the U.S. can be arranged with Transportation Operations, Room 1244, Department of State, Washington, DC 20520; FTS 632–4140/COML 800–424–2947.

6. Section 101–40.101–2 is revised to read as follows:

§ 101-40.101-2 GSA transportation and traffic management liaison.

GSA will maintain a continuing transportation and traffic management liaison program with the executive agencies to assist in the establishment, improvement, and maintenance of effective freight transportation and traffic management policies, practices, and procedures to meet executive agency program requirements.

7. Section 101–40.102 is revised to read as follows:

§ 101-40.102 Representation before regulatory bodies.

The statutory authority for the Administrator of General Services to participate in regulatory proceedings is contained in section 201 of the Federal Property and Administrative Services Act of 1949, as amended. In general, no executive agency subject to the act may appear on its own behalf in any proceedings before a transportation regulatory body. Representation is either provided by the Administrator or, in certain instances, authority, with the approval of the Administrator, may be delegated to certain officials in the General Services Administration or to the head of another executive agency to represent itself pursuant to section 205(d) of the act (40 U.S.C. 486(d)).

(a) With respect to carrier's tariffs, rates, and operating authority matters, agencies shall submit their requests and recommendations for representation before regulatory bodies to the GSA Central Office for further processing.

(b) When shipper's affidavit in support of a carrier's application for operating authority is required by law, the requesting agencies shall furnish the General Services Administration with such information and the appropriate form(s) as may be prescribed by transportation regulatory bodies in proceedings of this kind.

8. Section 101–40.103–2 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101-40.103-2 International transportation.

* * * * *

(a) *U.S.-flag ocean carriers.* Arrangements for international ocean transportation services by privately owned U.S.-flag vessels shall be made in accordance with the provisions of section 901(b) of the Merchant Marine Act of 1936, as amended by the Cargo Preference Act of 1954, 46 U.S.C. 1241(b). (See also 48 CFR Subpart 47.5.)

(b) *U.S.-flag certificated air carriers.* Arrangements for international air transportation services shall be made in accordance with the so-called Fly America Act as enacted by section 5 of the International Fair Competitive Practices Act of 1974, Pub. L. 96–623, January 3, 1975, as amended by section 21 of the International Air Transportation Competition Act of 1979, Public Law 96–192, February 15, 1980 (49 U.S.C. 1517). These acts require the use of U.S.-flag certificated air carriers for international movement of property to the extent that services by these carriers are available. (See also 48 CFR Subpart 47.4.)

9. Section 101–40.103–3 is added to read as follows:

§ 101-40.103-3 Coastwise transportation.

As stated in 46 U.S.C. 883, no merchandise shall be transported by water, or by land and water, between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under laws of the United States and owned by persons who are citizens of the United States or vessels to which the privilege of engaging in coastwise trade is extended by sections 13 and 807 of Title 46. There are exceptions and limitations to this basic provision, especially with regard to the United States island territories and possessions in the Atlantic and Pacific Oceans. (For example, see: 46 U.S.C. 877 relative to the Virgin Islands; 48 U.S.C. 1664 relative to American Samoa; and Presidential Proclamation 3215, December 12, 1957, relative to Canton Island.) Agencies shall comply with the current U.S. coastwise laws and any amendments to them. The Secretary of the Treasury is empowered to impose monetary penalties against agencies which violate the coastwise laws.

10. Section 101-40.106 is revised to read as follows:

§ 101-40.106 Reports.

Subject to the provisions of 41 CFR 201-45.6, each executive agency shall submit reports concerning its transportation procedures, practices, and operations to the GSA Central Office when requested.

11. Section 101-40.108 is revised to read as follows:

§ 101-40.108 Transportation seminars and workshops.

GSA conducts transportation seminars and workshops for the benefit of executive agency personnel assigned functions relating to the movement of Government materials. The objective of this training is to broaden traffic management knowledge and experience within the agency and to enhance economy of operations. Seminars on the use of socially and economically disadvantaged carriers are conducted by the GSA regional offices in coordination with the GSA Central Office. All other seminars are conducted through GSA Training Center (CTD). GSA regional offices will conduct workshops on transportation subjects designed to meet specific agency needs. Agencies desiring assistance in these matters should direct their requests to the appropriate GSA regional office or to the General Services Administration, GSA Training Center (CTD), P.O. Box 15608, Arlington, VA 22215, as appropriate.

12. Section 101-40.109-1 is amended by revising paragraph (a) to read as follows:

§ 101-40.109-1 Miscellaneous transportation-related contracts and agreements.

(a) The GSA Central Office or the appropriate GSA regional office will, as considered necessary, enter into agreements or contracts for transportation and related services, including but not limited to stevedoring, storage, drayage, packing, marking, ocean freight forwarding, accessorial services, demurrage, and weighing. (See 41 CFR 101-41.304-2 for the use of commerical forms and procedures instead of Government bills of lading.) These contracts and agreements will be made for and in behalf of all executive agencies.

* * * * *

13. Section 101-40.109-2 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 101-40.109-2 Office relocation contracts.

(a) Prior to entering into office relocation contracts, agencies should assure they are complying with the provisions of FPMR Temp. Reg. D-71. Assistance may be obtained from the appropriate GSA regional Office of Public Buildings and Real Property, as provided in FPMR Temp. Reg. D-71 (41 CFR Appendix to Subchapter D).

(b) An agency may either enter into its own office relocation contracts or request the appropriate GSA regional office to enter into office relocation contracts on the agency's behalf. Arrangements for moving services will be entered into either under competitive bidding procedures or other appropriate relocation arrangements which may include, but are not limited to, a Government tender pursuant to section 10721 of the Interstate Commerce Act (49 U.S.C. 10721). Requests to GSA should be made as soon as possible, preferably 90 calender days prior to the move; the agency shall furnish GSA pertinent information concerning the proposed relocation, such as the origin, destination, moving date, an itemized inventory of property to be moved, and the agency relocation coordinator.

(c) GSA regional offices, on behalf of executive agencies, may enter into term contracts for office relocation services in cities where it is determined that such contracts are warranted. The availability of term contracts for office relocation services will be announced through GSA bulletins as indicated in § 101-40.109-1(b).

* * * * *

14. Section 101-40.109-3 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 101-40.109-3 Mandatory use of transportation-related contracts and agreements.

* * * * *

(b) When term contracts or agreements for transportation-related services, excluding office relocations, are entered into and awarded by GSA for use "as required" the term contract or agreement is mandatory upon all executive agencies; however, exceptions to the mandatory use of term contracts or agreements may be granted by the appropriate GSA regional office.

(c) GSA may enter into optional use contracts for office relocations where deemed appropriate.

15. Section 101-40.110-2 is revised to read as follows:

§ 101-40.110-2 Minority business enterprises.

Consistent with the policies of the Government stated in 48 CFR Part 19, minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government purchases and contracts. Agencies shall encourage transportation-related minority enterprises, regardless of the mode of transportation, to identify themselves and provide services that will support the agencies' transportation requirements. The appropriate GSA regional office may be contacted for assistance, if needed.

16. Section 101-40.110-3 is added to read as follows:

§ 101-40.110-3 Women-owned business enterprises.

Consistent with the policies of the Government with respect to women-owned business enterprises as set forth in Executive Order 12138, May 18, 1979, and 48 CFR Subpart 19.9, women-owned business concerns shall have the maximum practicable opportunity to participate in Government transportation purchases and contracts. Executive agencies shall create or support programs responsive to the special needs of women-owned business enterprises, establish incentives to promote business or business-related opportunities for women-owned business enterprises, collect and disseminate information in support of women-owned business enterprises, and ensure to women-owned business

enterprises knowledge of the ready access to business-related services and resources.

17. Section 101–40.111 is revised to read as follows:

§ 101–40.111 Maintenance of tariff files.

(a) The National Capital Region (NCR) office listed in § 101–40.101–1(a) shall maintain a master file of carrier interstate tariffs covering all modes and methods of transportation commonly used by executive agencies. Each of the other GSA regional offices will maintain an interstate tariff file sufficient to meet the normal requirements of executive agencies located within its regional area of responsibility. Each GSA regional office will maintain an intrastate tariff file on those States located within the limits of its jurisdiction, except that when the transportation needs of client agencies require it to do so, a GSA regional office may maintain other intrastate tariffs.

(b) Executive agencies may maintain only those tariffs necessary to meet their routine operational requirements. Agencies may use GSA tariff files to meet unusual or abnormal transportation needs; or, alternatively, may request GSA to furnish rates, freight routings, or other tariff information. (See § 101–40.301 for use of GSA-furnished rates and routes.)

§ 101–40.113 [Removed and reserved]

18. Section 101–40.113 is removed and the section is reserved.

19. The heading of subpart 101–40.2 is revised to read as follows:

Subpart 101–40.2—Centralized Household Goods Traffic Management Program

20. Section 101–40.200 is revised to read as follows:

§ 101–40.200 Scope of subpart.

This subpart prescribes regulations concerning the movement of household goods of Government employees and their dependents who are eligible for relocation within the conterminous United States. As used in this subpart, the term "household goods" includes personal effects, and the term "employee(s)" includes eligible dependents. GSA will provide agencies with cost comparisons, the names of carriers eligible to handle specific shipments, and requested administrative support related to the Government employee's household goods movements. When GSA furnishes agencies cost comparisons between the GBL method (see § 101–40.203–2) and the commuted rate system (see § 101–40.203–3), the agencies shall make the final determination as to the method of shipment and to the selection of the carrier under the GBL method.

21. Section 101–40.201 is revised to read as follows:

§ 101–40.201 Applicability.

This subpart applies to civilian executive agencies, but will not apply to uniformed personnel of the U.S. Coast Guard.

22. Section 101–40.202 is revised to read as follows:

§ 101–40.202 The General Services Administration Household Goods Tender of Service (TOS) agreement.

As part of the centralized household goods traffic management program, GSA has developed a master household goods tender of service (TOS) agreement. This agreement establishes carrier service and performance standards which participating carriers agree to provide. Commercial carriers desiring to participate in this program must enter into individual TOS agreements with GSA, acting on behalf of executive agencies. Carriers that desire to enter into a TOS agreement or agencies desiring additional information should contact the General Services Administration, Federal Supply Service, Customer Service Bureau, Traffic and Travel Services (6FBT), Kansas City, MO 64131.

23. Section 101–40.203–1 is revised to read as follows:

§ 101–40.203–1 Household goods rate tenders.

GSA will accept or reject household goods carriers' rate tenders (see § 101–40.306) on behalf of executive agencies. Executive agencies shall reject rate tenders not submitted in accordance with this Subpart 101–40.2. Household goods carriers' TOS agreements and individual rate tenders covering interstate and intrastate shipments shall be submitted to the Chief, 6FBT. (See § 101–40.101–1.) Rate tenders shall be effective for a 12-month period beginning May 1 of each year unless a shorter period is established by the Chief, 6FBT. To qualify under the centralized household goods traffic management program, these tenders must be submitted in accordance with instructions issued by the Chief, 6FBT, on or about February 1 of each year unless a different cycle is established.

24. Section 101–40.203–2 is revised to read as follows:

§ 101–40.203–2 The GBL method.

(a) For the purpose of the centralized household goods traffic management program described in this subpart, shipments of Government employees' household goods authorized to move under a Government bill of lading (GBL) are classified as "GBL method" shipments. This method is different from the commuted rate system (§ 101–40.203–3) in that when a GBL is used, the Government, not the employee, is considered the shipper and the Government pays the carrier the applicable transportation charges. The decision as to which method is authorized shall be based on the cost comparison (see § 101–4.203–4) which the agency obtains from the appropriate GSA regional office specified in § 101–40.101–1. In addition to the cost comparison, the agency is furnished the name(s) of the carrier(s) eligible to handle the household goods shipment. When a shipment moves under a GBL, the agency prepares the bill of lading, books the shipment, and in event of loss or damage to the household goods may either file claims directly with the carrier, on behalf of the employee, or assist the employee in filing claims against the carrier.

(b) When the agency makes the final determination that the GBL method shall be used, the Government's financial obligation for the cost of shipping the employee's household goods is established. Once the GBL method is authorized and an employee chooses to move all or part of his/her household goods by some other means (see paragraphs (c) and (d) of this section), the Government's financial responsibility toward the employee for the shipping costs is limited to the cost which the Government would have incurred had all the household goods been moved on one GBL, in one lot, from one origin to one destination, by the low cost carrier available at the time the GBL method is authorized.

(c) When an employee requests, for personal reasons, that his/her household goods be shipped by a carrier that is more costly than the carrier selected by the agency, the Government will pay the carrier's applicable charges and collect from the employee any additional transportation costs resulting from the employee's choice of carrier. Agencies are cautioned to counsel employees regarding their potential indebtedness to the Government when employees select a higher cost carrier.

(d) When an employee chooses to use a rental truck, trailer, or private conveyance to transport his/her household goods, the Government will

reimburse the employee his/her actual expenses (e.g., vehicle rental fee, material handling equipment, packaging materials, fuel, toll charges, etc.) not to exceed the maximum amount described in paragraph (b) of this section.

25. Section 101–40.203–3 is revised to read as follows:

§ 101–40.203–3 The commuted rate system.

The commuted rate system is the method whereby employees who are authorized to transport their household goods at Government expense make their own shipping arrangements and are reimbursed by the Government according to commuted rate schedule published in GSA Bulletin FPMR A–2. In addition to transportation allowances, the commuted rate schedule includes allowances for various related accessorial expenses such as packing and crating, storage-in-transit, carrier labor charges, appliance servicing, and piano/organ handling. Under the commuted rate system, employees shipping via commercial carriers are responsible for making all arrangements with the carrier, filing loss and damage claims with the carrier, and making payment to the carrier after the shipment has been completed. Under the commuted rate system, the shipment is moved using commercial documents, or employees may elect to transport their household goods in a rental vehicle or by private conveyance. The use of household goods rate tenders (see § 101.4–203–1) is not authorized when household goods are shipped under the commuted rate system.

26 Section 101–40.203–4 is amended by revising paragraphs (a) and (c) to read as follows:

§ 101–40.203–4 Cost comparisons.

(a) Under the centralized household goods traffic management program, agencies shall obtain cost comparisons between the GBL method and the commuted rate system from the appropriate GSA regional office. Paragraph 2–8.3(c)(4)(a) of the Federal Travel Regulations (FPMR 101–7) provides that the commuted rate system shall be used for individual employee transfers without consideration being given to the GBL method, except that the GBL method may be used if the actual transportation cost (including the costs of packing and other accessorial services) to be incurred by the Government are predetermined and can be expected to result in a real savings to the Government of $100 or more.

* * * * *

(c) Agencies should use GSA Form 2485, Cost Comparison for Shipping Household Goods (Commuted Rate System Vs. GBL Method) for this purpose. (See § 101–40.4902.) In case of an emergency or an imminent moving date (less than 10 workdays), these details may be transmitted to the appropriate GSA regional office by phone. If information is received by phone, the response will be made by phone when requested. Regardless, all cost comparisons and carrier selection information will be confirmed in writing by the appropriate GSA regional office.

27. Section 101–40.204 is revised to read as follows:

§ 101–40.204 Carrier selection and distribution of shipments.

Results of the cost comparison will be furnished to the requesting agency together with the names and point of contact for at least 10 eligible carriers on interstate traffic or up to 5 eligible carriers on intrastate traffic. Eligible carriers are those carriers which meet minimum service criteria established by GSA. Additionally, eligible carriers will be evaluated and ranked on the cost comparison (see § 101–40.203–4) based on completed GSA Forms 3080, Household Goods Shipment Report (see § 101–40.205), submitted to GSA by Federal employees. Agencies should select the eligible carrier that has the most satisfactory service record offering the lowest cost shown on the cost comparison. Reasons for selecting a higher cost carrier shall be documented in the requesting agency's records.

28. Section 101–40.205 is revised to read as follows:

§ 101–40.205 Quality control.

GSA Form 3080, Household Goods Shipment Report (see § 101–40.4902), approved by the Office of Management and Budget under OMB control number 3090–0092, is a self-addressed form used by GSA and other agencies for monitoring the performance and quality of household goods carriers' service. When the appropriate GSA regional office furnishes a cost comparison, it shall also furnish the requesting agency with GSA Form 3080. Information compiled from the completed GSA Form 3080 is used by GSA or agencies to determine if additional actions under § 101–40.208 should be considered. When household goods shipments are made under the GBL method, the employee (following delivery of the shipment) should promptly complete GSA Form 3080 and mail it to the GSA regional office preaddressed thereon. Agencies may submit other documentation of instances of inadequate carrier service or performance to the appropriate GSA regional office. Sufficient details must be furnished to identify specific shipments.

29. Section 101–40.206 is revised to read as follows:

§ 101–40.206 Household goods carriers' liability.

Amounts that will be paid by the Government for shipment of employees' household goods—either under the GBL method or the commuted rate system—are based on an assumed valuation of 60 cents per pound per article, the minimum released value established in tariffs for carrier liability. As explained in paragraph (b) of this section, however, a carrier's liability is not automatically set at the 60 cents per pound per article when it is transporting household goods under a commercial bill of lading. Employees should be fully informed about the amount of their reimbursements will be determined, the differences in standard liability under Government and commercial bills of lading, what steps are necessary to increase or decrease the carrier's liability, and the relative merits of paying out-of-pocket for carrier liability coverage above 60 cents per pound per article vs. filing a claim against the United States for loss or damage in excess of 60 cents per pound per article. (See § 101–40.207(b).)

(a) When a Government employee's household goods are shipped under a GBL, the carrier's liability for loss and/or damage is limited to 60 cents per pound per article unless otherwise specified on the GBL. Carriers' tariffs provide for the option to increase liability to $1.25 times the weight of the shipment in pounds or for a declared lump sum value on the entire shipment, whichever is greater, or for full value protection of the household goods shipped. For the increased liability, carriers generally charge a fee based on each $100, or fraction thereof, of the valuation declared by the owner of the household goods. If the employee requests that a higher valuation be stated on the GBL and confirms the request in writing, the agency may enter this declaration on the GBL, and the extra valuation charge assessed by the carrier is paid by the agency and collected from the employee. If the employee elects to increase the carrier's liability after the GBL has been received by the carrier but before the shipment has been picked up, the employee should not make separate arrangements with the carrier for increased liability but should rather notify the issuing officer of the higher valuation desired

and request that the original GBL be amended on Standard Form (SF) 1200, Government Bill of Lading Correction Notice (See § 101–41.4901–1200.)

(b) Under the commuted rate system, the employee makes all arrangements for moving his/her household goods, and is reimbursed under the commuted rate schedule. In contrast to paragraph (a) of this section, when the employee makes arrangements for his/her move directly with a carrier using a commercial bill of lading, the carrier's liability automatically is set at $1.25 times the weight of the shipment, unless the employee specifically declares a lesser value (i.e., 60 cents per pound per article) on the commercial bill of lading. Since the commuted rate schedule established for reimbursement to the employee for shipment of household goods is based on tariff transportation charges with a released value of only 60 cents per pound per article, the employee will bear the cost of the additional charge for extra valuation ($1.25) unless he/she specifies that the shipment should be released at the lower valuation rate of 60 cents per pound per article.

30. Section 101–40.207 is revised to read as follows:

§ 101–40.207 Household goods loss and damage claims.

(a) Claims for loss and damage to household goods will normally be filed and processed with the line-haul carrier; i.e., the carrier to which the household goods were tendered and which is shown on the bill of lading as having received the shipment. Depending on agency policy, claims for the repair, replacement, or loss of household goods may be filed by either the agency or the employee (as owner of the goods). When the employee files the claim, the agency or the appropriate GSA regional office will furnish the employee necessary assistance in claim procedures.

(b) Under 31 U.S.C. 3721 (the Military Personnel and Civilian Employees' Claims Act of 1964, as amended), employees who sustain a loss or damage to their household goods that exceeds the amount recovered from a carrier in settlement of a claim may file claim against the United States for the difference sustained. The Act authorizes, but does not require, agencies to compensate employees up to $25,000 for the excess loss or damage sustained by the employee. When it is the policy of the agency not to compensate its employees under the Act, the agency should advise employees of the options available to them for insuring their household goods against greater risk of loss. (See § 101–40.206(b) of this subpart.)

(c) When settling a claim for loss or damage to a shipment of household goods, carriers may settle either for the full value declared by the shipper or arrive at the current actual value of the lost or damaged item by using the criterion of replacement cost of the lost or damaged item, less depreciation. The basis upon which carriers will settle a claim is contained in carriers' tariffs or is referenced in section 10721 (49 U.S.C. 10721) quotations on file with GSA and the Interstate Commerce Commission.

(d) Regulations governing household goods carriers subject to the Revised Interstate Commerce Act are contained in 49 CFR Part 1056.

(e) Additional information concerning processing loss and damage claims may be obtained from the appropriate GSA regional office.

31. Section 101–40.208 is revised to read as follows:

§ 101–40.208 Temporary nonuse, debarment, or suspension of household goods carriers.

Based on information obtained from the completed GSA Form 3080 or documented instances of other service complaints or deficiencies, agencies may place household goods carriers in temporary nonuse, debarred, or suspended status in accordance with the procedures specified in subpart 101–40.4.

Subpart 101–40.3—Rates, Routes, and Services

32. Section 101–40.300 is revised to read as follows:

§ 101–40.300 Scope of subpart.

This subpart prescribes regulations governing the determination and use of rates and related data in the transportation of property for the Government; selection of the mode of transportation and the carriers within the mode; and negotiations of classification ratings, rates, and services.

33. Section 101–40.301 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 101–40.301 GSA rate and routing services.

(a) Except as otherwise provided in this subpart, executive agencies shall obtain rate and/or routing information from the appropriate GSA regional office when they have general freight or household goods shipments categorized as follows:

Shipment category	Shipment weight
Surface shipments other than household goods. (See § 101–40.305–3 for exemption.).	10,000 pounds and over, or shipments (regardless of weight) that occupy the full visible capacity (see note) of a railcar or a tractor-trailer combination(s).
Air shipments	1,000 pounds and over.
Household goods shipments.	All shipments, regardless of weight (except will not apply on shipments moving in foreign commerce; see 101–40.101–1(b)). (See subpart 101–40.2 for shipments moving within the conterminous U.S.).

Note.—Full visible capacity generally means that quantity of freight which in the manner loaded as fills a vehicle that no additional article in the shipping form tendered identical in size to the largest article in the shipment can be loaded in or on the vehicle. Consult governing tariffs for precise definition and application.

(1) Unless otherwise revoked by the GSA Central Office, permanent exemption from the rate and routing requirements of this section is granted to the Federal Emergency Management Agency (FEMA), Department of Energy (DOE), National Aeronautics and Space Administration (NASA), and the United States Department of Agriculture (USDA) to the following extent:

(i) FEMA Initial positioning of mobile homes shipped in response to disasters.

(ii) DOE Priority energy and classified defense and nuclear waste management shipments.

(iii) NASA Shipments of key, critical items necessary to the success of space and aerospace research, development, acquisition, flight or launch activities.

(iv) USDA Emergency shipments of forest firefighting materials and equipment; household goods shipments to and from isolated areas.

(2) To meet other transportation exigencies of a critical and recurring nature, executive agencies, other than those exempted to the extent noted in paragraph (a)(1) of this section, may request the appropriate GSA regional office to grant a temporary exemption from the routing requirements of this section. In a local emergency, which precludes the requesting of routing instructions in accordance with the requirements of this section, routing by any other mode may be made without prior approval. Requests for temporary exemption shall be in writing, and the appropriate GSA regional office will accept or deny the request by written instructions to the requesting agency. Exemptions will apply for a duration of time not to exceed 1 year; however, on written request, an exemption may be renewed or extended.

(b) Agencies shall submit requests for rate and routing information to the appropriate GSA regional office.

Agencies may telephone urgent requests, and replies will be made by telephone and confirmed upon request by the use of GSA Form 420, Freight Rate and Route Request/Response, or GSA Form 2485, as appropriate. (See § 101–40.4902.)

(1) To obtain rate and routing information, agencies will furnish the necessary details concerning the shipment as far in advance of the proposed shipping date as possible. For freight shipments, GSA Form 420 may be used. The procedures in Subpart 101–40.2 shall be followed when requesting household goods rate and route information on shipments moving within the coterminous United States.

(2) To eliminate the need for repetitive routing instructions, GSA regional offices may issue standing route orders to cover normal repetitive movements (two or more shipments per month) of specific items between specified points by any mode of transportation. Ordinarily, a standing route order will be issued when the origin, destination, commodity(ies), and frequency of shipment constitute a repetitive traffic pattern. GSA regional offices will maintain a standing route order file and review routings at 60-day intervals from the date of their issuance to assure current application of rates, ratings, routes, and classification. When required by changed conditions, GSA regional offices shall provide the requesting agency with revised routing instructions.

* * * * *

(d) Executive agency shippers will comply with all Federal, State, and local laws and regulations relating to vehicular size and weight limitations.

34. Section 101–40.303 is revised to read as follows:

§ 101–40.303 Application of the standard routing principle.

In the application of the standard routing principle, the principal factors for consideration, in their relative order of importance, are: satisfactory service, aggregate delivered cost, least fuel-consumptive carrier/mode, and equitable distribution of traffic.

35. Section 101–40.303–2 is revised to read as follows:

§ 101–40.303–2 Aggregate delivered costs.

When comparing aggregate delivered costs to determine the most economical routing of shipments consistent with service requirements, consideration will be given to all factors which increase costs to the shipping or receiving activity. In addition to the actual transportation rates and charges, other cost factors, such as packing, blocking, bracing, dunnage, drayage, loading, and unloading, should be considered where these items affect overall costs.

36. Section 101–40.303–4 is revised to read as follows:

§ 101–40.303–4 Equitable distribution of traffic among carriers.

When more than one mode of transportation or more than one carrier within a mode can provide equally satisfactory service at the same aggregate cost and all modes are equally fuel efficient, the traffic shall be distributed as equally as practicable among the modes and among the carriers within the modes. When socially or economically disadvantaged carriers and women-owned carriers are among the eligible competing carriers, positive action will be taken to include such carriers in the equitable distribution of traffic.

37. Section 101–40.304 is amended by revising paragraphs (b) and (c) and by adding paragraph (d) to read as follows:

§ 101–40.304 Description of property for shipment.

* * * * *

(b) Hazardous materials, such as explosives, flammable liquids, flammable solids, oxidizers, poison A, or poison B, shall be prepared for shipment and described on bills of lading or other shipping documents in accordance with the Department of Transportation Hazardous Materials Regulations, Subchapter C, Title 49 of the Code of Federal Regulations.

(c) Agencies which transport, or offer for transportation, hazardous waste, as described in 40 CFR Part 261, for off-site treatment, storage, or disposal are subject to regulations of the Environmental Protection Agency (EPA) and the Department of Transportation (DOT). The EPA and DOT, in a joint rulemaking effort, have developed a manifest system to ensure that hazardous waste designated for delivery to an off-site treatment, storage, or disposal facility actually reaches its destination. The central element of the system is the "manifest," a control and transport document that accompanies hazardous waste from its point of generation to its point of destination. Accordingly, agencies shall observe the provisions of 40 CFR Parts 260, 261, 262, and 271 and 49 CFR Parts 171 and 172, as required.

(d) Agency requests for specific freight descriptions shall be submitted to the appropriate GSA regional office.

38. Section 101–40.305–1 is revised to read as follows:

§ 101–40.305–1 Negotiations by GSA.

Except as provided in § 101–40.305–3, GSA regional offices will, on behalf of executive agencies, conduct all transportation negotiations with carriers to establish or modify rates, charges, ratings, services, and rules or regulations pertaining thereto.

39. Section 101–40.305–2 is revised to read as follows:

§ 101–40.305–2 Cost analysis required on substantial movements.

Except as provided in § 101–40.305–3, executive agencies shall submit to the appropriate GSA regional office complete information concerning planned transportation so that a cost analysis may be made to determine whether negotiation is appropriate. This information should be submitted as far in advance of the planned transporation as possible. The information supplied shall be detailed and shall include property characteristics (those requiring shipment in bags, boxes, or bulk; hazardous properties; weight; dimension; density; value; and susceptibility to damage), origin, destination, number of shipments, weight per shipment, planned shipping schedule, and planned required delivery date.

40. Section 101–40.305–3 is amended by revising the introductory text and paragraphs (a) and (d), and by removing and reserving paragraph (b) to read as follows:

§ 101–40.305–3 Negotiations by other executive agencies.

Except for the transportation of household goods under subpart 101–40.2 and where GSA has not entered into office relocation contracts pursuant to § 101–40.109–2, executive agencies are authorized to negotiate with carriers in establishing or modifying rates, charges, classification ratings, services, and rules or regulations pertaining thereto under the following conditions:

(a) When the total quantity of property to be shipped does not exceed 100,000 pounds per shipment or when the known aggregate of more than one shipment will not exceed 100,000 pounds.

Note.—Agencies making surface shipments under agency-negotiated rates as authorized in this section are exempt from obtaining GSA rate and routing information as required in § 101–40.301(a).

(b) [Reserved]

* * * * *

(d) When approval to negotiate is granted by the GSA Central Office or the appropriate GSA regional office.

Note.—§ 101–40.305–3 does not prohibit executive agencies from seeking GSA assistance in negotiations.

41. Section 101–40.306 is revised to read as follows:

§ 101–40.306 Rate tenders to the Government.

Under the provisions of section 10721 of the Revised Interstate Commerce Act (49 U.S.C. 10721), common carriers are permitted to submit tenders to the Government which contain transportation rates and/or charges for accessorial services that are lower than those published in tariffs applicable to the general public. In addition, rate tenders may be applied to shipments other than those made by the Government provided the total benefits accrue to the Government; that is, provided the Government pays the charges or directly and completely reimburses the party that initially pays the freight charges (Interpretation of Government Rate Tariff for Eastern Central Motor Carriers Association, Inc., 332 I.C.C. 161 (1968)).

42. Section 101–40.306–1 is amended by revising paragraph (a) to read as follows:

§ 101–40.306–1 Recommended rate tender format.

(a) Executive agencies will use only those rate tenders which carriers have submitted in writing. Carriers should be encouraged to use Optional Form 280, Uniform Tender of Rates and/or Charges for Transportation Services, when preparing and submitting rate tenders to the Government. Optional Form 280 (see § 101–40.4903) is approved by the Office of Management and Budget under OMB control number 3090–0038. Rate tenders that are ambiguous in meaning shall be resolved in favor of the Government; therefore, explicit terms and conditions are necessary to preclude misunderstandings by the parties to the rate tender.

* * * * *

43. Section 101–40.306–3 is revised to read as follows:

§ 101–40.306–3 Distribution.

Each agency receiving rate tenders shall promptly submit one signed copy to the National Capital Region (NCR) office listed in § 101–40.101–1(a) and two copies (including at least one signed copy) to the General Services Administration, Office of Transportation Audits (FW), Washington, DC 20405.

44. The heading of subpart 101–40.4 is revised to read as follows:

Subpart 101–40.4—Temporary Nonuse, Debarment, and Suspension of Carriers

45. Section 101–40.400 is revised to read as follows:

§ 101–40.400 Scope of subpart.

This subpart prescribes:

(a) Policies and procedures governing the temporary nonuse, debarment, and suspension of commercial carriers transporting freight or household goods for the account of civilian executive agencies;

(b) Provisions for the listing of temporary nonuse, debarred, or suspended carriers; and

(c) Treatment to be accorded carriers which are placed in temporary nonuse, debarred, or suspended status.

46. Section 101–40.401 is revised to read as follows:

§ 101–40.401 Policy.

(a) Executive agencies shall obtain transportation services from responsible commercial carriers providing consistent and satisfactory service to meet an agency's needs. Temporary nonuse, debarment, and suspension are discretionary actions which, when taken in accordance with this subpart, are appropriate means to implement this policy.

(b) The Federal Acquisition Regulation (FAR), codified at 48 CFR Subpart 9.4, implements on a Government-wide basis the uniform policies and procedures governing the debarment and suspension of Government contractors, promulgated by the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, in Policy Letter 82–1, issued June 24, 1982 (47 FR 28854, July 1, 1982), and shall apply to contracts for transportation (including bills of lading). A Government bill of lading (GBL) is a contract for transportation services. (See 41 CFR 101–41.302–2(a)(1).) A commercial bill of lading is also a contract for transportation services.

(c) Temporary nonuse is not governed by OFPP Policy Letter 82–1 since temporary nonuse does not have Government-wide effect and may be initiated by agency transportation officers. Debarment and suspension, however, shall only be imposed by the designated official specified in this subpart.

(d) Debarment or suspension of a carrier precludes the executive agency, including the Department of Defense, from awarding such carrier a contract for transportation.

(e) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

47. Section 101–40.402 is revised to read as follows:

§ 101–40.402 General.

(a) Temporary nonuse may be imposed by an authorized agency transportation officer for the causes set forth in § 101–40.408–2. This action should be taken when a carrier's failure to provide adequate service indicates that the carrier's continued participation poses a risk to effective operation of agency transportation programs. Temporary nonuse is a localized program response to service failures which the carrier can readily correct during a period of limited exclusion.

(b) Debarment is designed to protect the Government by excluding a carrier for a specified period of time following completion of an investigation or legal proceeding. A carrier may be debarred for willful and/or persistent service failure or if the agency debarring official determines that a Government-wide exclusion of the carrier is necessary to ensure the integrity of Government transportation programs. The agency transportation officer shall refer carriers to the agency debarring official in accordance with 48 CFR 9.406, if the carrier has willfully and/or persistently failed to comply with its contractual obligations under the terms and conditions of any contract for transportation. Referrals for criminal and/or civil fraud prosecutions should be made by the agency's Inspector General or an equivalent official.

(c) Suspension is designed to protect the Government pending the outcome of a legal proceeding or investigation concerning criminal activity, civil fraud, or antitrust violations concerning contractual relations with the Government. When the agency transportation officer suspects that a carrier has engaged in such conduct, the matter should be referred to the agency's Inspector General or an equivalent official.

§ 101–40.402–1 [Removed and reserved]

48. Section 101–40.402–1 is removed and this section is reserved.

49. Section 101–40.403 is revised to read as follows:

§ 101–40.403 Definitions.

(a) "Affiliates" means carriers or individuals if, directly or indirectly—

(1) Either one controls or can control the other, or

(2) A third party controls or can control both.

(b) "Agency" means executive agencies unless otherwise noted.

(c) "Consolidated list" means the list compiled, maintained, and distributed by GSA under 48 CFR 9.404 to identify Government contractors debarred or suspended. For the purpose of implementing the provisions of this subpart, the contractor listing shall also include debarred or suspended commercial carriers.

(d) "Carrier" means any individual or other legal entity authorized to transport freight or household goods under a certificate, license, or permit issued by a Federal, State, or local regulatory body.

(e) "Contract for transportation" means a GBL, commercial bill of lading, purchase order, rate tender, or any other instrument establishing binding obligations on the Government to purchase, and the carrier to provide, transportation services.

(f) "Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction whether entered upon a verdict or plea, and includes a conviction entered upon a plea of *nolo contendere*.

(g) "Debarment" means action taken by a debarring official under 48 CFR 9.406 to exclude a carrier for a specified period of time from receiving on a Government-wide basis any type of contract for transportation.

(h) "Debarring official" means the head of an agency or an official authorized under 48 CFR 9.403 by the head of an agency to impose debarment.

(i) "Indictment" means indictment for a criminal offense. Any information or other filing by competent authority charging criminal offense shall be given the same effect as an indictment.

(j) "Legal proceeding" means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

(k) "Reviewing official" generally means the transportation officer's immediate supervisor. Agencies may designate other personnel as reviewing officials for the purpose of reviewing decisions to place carriers in temporary nonuse status provided such designations are consistent with the individual's current duties and responsibilities.

(l) "Suspending official" means the head of an agency or an official authorized under 48 CFR 9.403 by the head of an agency to impose suspension.

(m) "Suspension" means action taken by a suspending official under 48 CFR 9.407 to disqualify a carrier temporarily on a Government-wide basis from receiving any contracts for transportation; a carrier so disqualified is "suspended."

(n) "Temporary nonuse" means action taken by a transportation officer under § 101–40.408 to exclude a carrier for a specified period of time from participating in shipments of freight or household goods under tariffs, rate tenders, tenders of service, commercial or Government bills of lading, and similar arrangements to or from specified transportation facilities.

(o) "Transportation facility" means an agency installation, depot, or shipping and receiving point which handles Government traffic.

(p) "Transportation officer" means agency traffic managers or other officials responsible for managing bill of lading type commitments. Agencies may designate other personnel as transportation officers for the purpose of imposing temporary nonuse status provided such designations are consistent with the individual's current duties and responsibilities.

§ 101–40.403–1 [Removed and reserved]

50. Section 101–40.403–1 is removed and the section is reserved.

§ 101–40.403–2 [Removed and reserved]

51. Section 101–40.403–2 is removed and the section is reserved.

52. The heading of § 101–40.404 is revised to read as follows:

§ 101–40.404 Maintenance of a list of temporary nonuse, debarred, or suspended carriers.

53. Section 101–40.404–1 is revised to read as follows:

§ 101–40.404–1 Listing temporary nonuse carriers.

Each agency that places a carrier in temporary nonuse shall:

(a) Compile and maintain a current list of carriers placed in temporary nonuse;

(b) Direct inquiries concerning the listed carriers to the transportation office that took the action; and

(c) Establish procedures to provide for the effective use of the list to ensure that the scope and duration of the temporary nonuse status are communicated to all affected transportation facilities.

54. Section 101–40.404–2 is revised to read as follows:

§ 101–40.404–2 Listing debarred or suspended carriers.

(a) Carriers which have been debarred or suspended by agency debarring/suspending officials will be included on the consolidated list in accordance with the procedures established at 48 CFR 9.404.

(b) Agency transportation officers should make arrangements for access to the consolidated list through their agency's debarring and/or suspending official.

(c) Agencies shall establish effective internal procedures for the use of the consolidated list to ensure that the agency does not award contracts for transportation to debarred or suspended carriers.

§ 101–40.404–3 [Removed and reserved]

55. Section 101–50.404–3 is removed and the section is reserved.

§ 101–40.404–4 [Removed and reserved]

56. Section 101–40.404–4 is removed and the section is reserved.

§ 101–40.404–5 [Removed and reserved]

57. Section 101–40.404–5 is removed and the section is reserved.

58. Subpart 101–40.4 is amended by adding §§ 101–40.405, 101–40.406, 101–40.407, 101–40.408, 101–40.408–1, 101–40.408–2, 101–40.408–3, 101–40.408–4, 101–40.409, 101–40.409–1, 101–40.409–2, 101–40.410, 101–40.410–1, and 101–40.410–2 to read as follows:

§ 101–40.405 Agency records.

(a) At a minimum, each agency's records relating to a carrier's temporary nonuse shall, in accordance with the agency's internal records retention procedures, contain the following information:

(1) The name, address, and Standard Carrier Alpha Code (SCAC) (see 41 CFR 101–41.310–2(d)) of each carrier placed in temporary nonuse status;

(2) The duration and scope of the temporary nonuse status;

(3) The cause for imposing temporary nonuse, and the facts which demonstrate the existence of such a cause;

(4) Information and arguments in opposition to the imposition of temporary nonuse period submitted by the carrier or his/her representative; and

(5) The reviewing official's determination regarding maintaining or removing the temporary nonuse status.

(b) Records concerning debarment or suspension of carriers shall be maintained in accordance with 48 CFR 9.406–3 and 9.407–3.

§ 101–40.406 Treatment to be accorded debarred or suspended carriers.

(a) Carriers debarred or suspended by an agency in accordance with 48 CFR Subpart 9.4 shall be excluded from receiving awards of contracts for transportation. Debarment and

suspension shall be applied on a Governmentwide basis on the named carriers and their named affiliates.

(b) Prior to requesting transportation services, agencies shall review the consolidated list for debarred or suspended carriers. If a carrier is listed, the carrier shall receive such treatment as specified therein.

§ 101-40.407 Agency coordination.

When more than one agency has an interest in debarring or suspending a carrier, consideration shall be given to designating one agency as the lead agency for making a decision. Similarly, when the cause for considering placing a carrier in temporary nonuse status involves more than one transportation facility, consideration should be given to designating one transportation officer as the lead official for the decision.

§ 101-40.408 Temporary nonuse.

§ 101-40.408-1 General.

The agency's authorized transportation officer may, in the best interest of the Government, place a carrier in temporary nonuse for a period not to exceed 90 consecutive days for any of the causes contained in § 101-40.408-2 using the procedures in § 101-40.408-3, except that if a carrier fails within the period specified to correct the cause(s) for which temporary nonuse was imposed, the period of nonuse will be extended an additional 30 days for debarment referral. The existence of a cause for temporary nonuse under § 101-40.408-2 does not necessarily require that a carrier be placed in temporary nonuse; the seriousness of the carrier's acts or omissions and any mitigating factors should be considered in making a temporary nonuse decision. A carrier placed in temporary nonuse is excluded from participating in the agency's transportation activities and programs to the extent and for the period specified. The extent or scope of temporary nonuse may be limited to those agency transportation facilities which have experienced the problems leading to the imposition of temporary nonuse on which may be reasonably expected to experience similar problems. Temporary nonuse shall not be extended to unaffected facilities solely for punitive reasons or to damage the carrier's operations.

§ 101-40.408-2 Causes for temporary nonuse.

A carrier may be placed in temporary nonuse for the causes listed in paragraphs (a) through (n) of this section.

(a) Willful violations of the terms of the tariffs, tenders of service, commercial or Government bills of lading, or similar arrangements determining the relationship of the parties;

(b) Persistent and/or willful failure to meet requested packing/pickup service requirements;

(c) Deliveries exceeding time-in-transit standards when established by the Government; e.g., the GSA household goods tender of service and transit times established for shipments from agencies or the GSA Federal Supply Service distribution centers;

(d) Failure to meet required delivery dates on commercial or Government bills of lading;

(e) Failure to furnish and use clean and safe vehicles and freight handling equipment;

(f) Violation of Department of Transportation (DOT) hazardous materials regulations;

(g) Mishandling of freight; e.g., damaged or missing transportation seals, or improper loading, blocking, packing, or bracing of property;

(h) Excessive damage or loss to material transported;

(i) Improper routing;

(j) Failure to pay just debts so as to subject Government shipments to possible frustration, unlawful seizure, or detention;

(k) Failure to maintain insurance coverage;

(l) Operating without legal authority;

(m) Failure to settle claims in accordance with applicable Government regulations; and

(n) Repeated failure to comply with the regulations of the DOT, the Interstate Commerce Commission (ICC), or State or local governments; or failure to comply with other applicable Government regulations.

§ § 101-40.408-3 Procedures.

(a) *Investigation and referral.* Agencies shall prescribe procedures for placing a carrier in temporary nonuse. Further, the procedures shall provide that a carrier which fails, within the period of temporary nonuse, to correct the cause(s) for which temporary nonuse was imposed shall be referred to the agency's debarring official for appropriate action.

(b) *Notice of proposal to place a carrier in temporary nonuse.* The carrier shall be notified by certified mail with return receipt requested of the following information:

(1) The effective dates of the proposed temporary nonuse;

(2) The extent or scope of the proposed temporary nonuse including the specific transportation facilities to which the period of exclusion will be applicable;

(3) The facts relied on to support the specified cause(s) for temporary nonuse;

(4) A period of 7 calendar days from the date the transportation officer's notice is received during which the carrier may submit in person, in writing, or through a representative, rebuttal information and arguments opposing the temporary nonuse;

(5) A period of 5 workdays during which the transportation officer will evaluate the carrier's rebuttal information and opposing arguments and render a decision;

(6) The availability of an appeal of the transportation officer's decision to a reviewing official, provided the request for review is received within 5 work days of receipt of the transportation officer's decision;

(7) The corrective action required by the carrier to be removed from temporary nonuse; and

(8) An additional nonuse period of 30 calendar days during which the carrier that fails to correct the cause(s) for temporary nonuse will be referred to the agency's debarring official for appropriate action.

(c) *Decision-making process.* (1) Agencies shall prescribe procedures governing the temporary nonuse decision-making process, which shall be as informal as practicable, consistent with principles of fundamental fairness. The procedures shall afford the carrier an opportunity to submit in person, in writing, or through a representative, information and argument in opposition to a temporary nonuse status.

(2) If the carrier requests a review of the transportation officer's decision, the transportation officer shall afford the carrier an opportunity to make a presentation, orally or in writing, or through a representative, to a designated agency reviewing official. This presentation shall be held within 5 workdays of the transportation officer's receipt of the carrier's request for a review of his/her decision. The reviewing official shall:

(i) Consider the carrier's submission, investigate the contentions made, and make written findings of fact concerning the matters in dispute;

(ii) Assess mitigating factors and corrective measures proposed by the carrier;

(iii) Determine whether the facts, as found during his/her review, support a cause for imposition of the period of temporary nonuse porposed by the transportation officer; and

(iv) Inform the carrier of the result of his/her review within 5 workdays of

receiving the carrier's submission or presentation.

(3) The effective date of the period of temporary nonuse may be delayed if there is a review by a designated agency reviewing official. Should a period of temporary nonuse be imposed following such a review, the period of temporary nonuse shall be adjusted to reflect the period proposed by the transportation officer unless a different period is recommended by the reviewing official.

(d) *Decision to impose temporary nonuse.* In actions in which a carrier does not request a review of the transportation officer's decision, the transportation officer shall make a decision on the basis of all the information contained in the administrative record, including any submission by the carrier. The Transportation officer shall inform the carrier of his/her decision within 5 workdays of the closing of the period for evaluating the carrier's information and arguments or his/her receipt of the reviewing officer's report. This decision shall be communicated in writing, by return receipt mail, and shall include notice of:

(1) The extent or scope of the period of nonuse including the specific transportation facilities affected by the period of temporary nonuse;

(2) The effective dates of the period of temporary nonuse;

(3) The corrective action, if any, necessary to be removed from temporary nonuse status;

(4) An additional period of 30 calendar days for debarment referral if the conduct leading to the imposition of the period of temporary nonuse continues; and

(5) Procedures for the carrier to obtain a review of the transportation officer's decision by a designated reviewing official.

§ 101-40.408-4 Period of temporary nonuse.

Temporary nonuse shall be for a period commensurate with the seriousness of the cause(s) for temporary nonuse, but not for more than 90 consecutive days, except that the period of temporary nonuse may be extended an additional 30 calendar days for debarment referral when the carrier fails to correct the cause(s) for which temporary nonuse was imposed. The transportation officer, for good cause, may impose temporary nonuse beginning the same day that the notice of proposed temporary nonuse is given when continued use of the carrier's services would place the Government at risk. The transportation officer may consider terminating the temporary nonuse or reducing the period of temporary nonuse, upon the carrier's application, supported by documentation, for reasons deemed appropriate by the transportation officer, such as:

(a) Newly discovered material evidence;

(b) Bona fide change in the carrier's ownership or management; or

(c) Elimination of the cause(s) for which temporary nonuse was imposed.

§ 101-40.409 Debarment.

§ 101-40.409-1 General.

(a) The debarring official may, in the best interest of the Government, debar a carrier for any of the causes contained in § 101-40.409-2, using the procedures provided in 48 CFR 9.406-3. The existence of a cause for debarment under § 101-40.409-2 does not necessarily require that a carrier be debarred; the seriousness of the carrier's acts or omissions and the mitigating factors should be considered in making any debarment decision.

(b) Debarment of a carrier constitutes debarment of all divisions or other organizational elements of the carrier, unless the debarment decision is limited by its terms to specific divisions or organizational elements. The debarring official may extend the debarment decision to include any affiliates of the carrier, if the affiliates are—

(1) Specifically named and

(2) Given written notice of the proposed debarment and an opportunity to respond.

(c) A carrier's debarment shall apply to all agencies including the Department of Defense unless the head of the agency requiring transportation services, for an authorized representative, states in writing the compelling reasons justifying continued business dealings between that agency and the carrier.

§ 101-40.409-2 Causes for debarment.

The debarring official may debar a carrier for any of the following reasons:

(a) Failure of a carrier, within the prescribed period of temporary nonuse, to correct any of the causes listed in § 101-40.408-2;

(b) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a contract for transportation;

(2) Violation of Federal or State antitrust statutes;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the present responsibility of the carrier as a transporter of the Government's property or the household goods of its employees relocated in the interest of the Government.

(c) Violation of the terms of a contract for transportation so serious as to justify debarment, such as:

(1) Willful failure to perform in accordance with the terms of one or more contracts for transportation, or

(2) A history of failure to perform, or of unsatisfactory performance of, one or more contracts for transportation;

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of the carrier; or

(e) Debarment for any of the causes stated in paragraphs (a) through (d) of this section by another agency where the orignal debarment did not have Governmentwide effect.

§ 101-40.410 Suspension.

§ 101-40.410-1 General.

(a) The suspending official may, in the Government's best interest, suspend a carrier for any of the causes stated in § 101-40.410-2, using the procedures provided in 48 CFR 9.407-3.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence of one or more of the causes set forth in § 101-40.410-2, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, consideration should be given to how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts of carriage, loss or damage reports, and correspondence, as appropriate.

(c) Suspension of a carrier constitutes suspension of all divisions or other organizational elements of the carrier, unless the suspension decision is limited by its terms to specific divisions or organizational elements. The suspending official may extend the suspension decision to include any affiliates of the carrier, if they are—

(1) Specifically named and

(2) Given written notice of the suspension and an opportunity to respond.

(d) A carrier's suspension shall apply to all agencies, including the Department of Defense, unless the head of an agency requiring transportation services, or an authorized representative, states in writing the compelling reasons justifying continued business dealings between that agency and the carrier.

§ 101-40.410-2 Causes for suspension.

(a) The suspending official may suspend a carrier suspected upon adequate evidence of:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a contract for transportation;

(2) Violation of Federal or State antitrust statutes;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the carrier as a transporter of the Government's property or the household goods of its employees relocated in the interest of the Government.

(b) Indictment for any of the causes in paragaph (a) of this section constitutes adequate evidence for suspension;

(c) The suspending official, may upon adequate evidence also suspend a carrier for any other cause of so serious or compelling a nature that it affects the present responsiblity of a carrier; or

(d) A carrier may be suspended for any of the above causes based on a suspension by another agency where the original suspension does not have Governmentwide effect.

SUBPART 101-40.7—REPORTING AND ADJUSTING DISCREPANCIES IN GOVERNMENT SHIPMENTS

59. Section 101-40.702-2 is amended by revising paragraph (a) to read as follows:

§ 101-40.702-2 Discrepancies in Government bill of lading shipments.

(a) When a shipment is made on a Standard Form 1103, U.S. Govenment Bill of Lading, or on a Standard Form 1203, U.S. Government Bill of Lading-Privately Owned Personal Property, the consignee shall make certain the Government bill of lading number is shown on both the carrier's delivery receipt and the consignee's copy of the delivery receipt. When a shipment is made on a commercial bill of lading to be converted to a Government bill of lading, in which case the Government bill of lading number would not normally be known at the time of delivery, the consignee shall sign the delivery receipt and enter the Government bill of lading number, when it becomes available, on the consignee's copy of the delivery receipt.

* * * * *

60. Section 101-40.702-3 is amended by revising paragraphs (a), (b), (c), and (d) to read as follows:

§ 101-40.702-3 Preparation of a discrepancy report.

(a) When the total value of the loss, damage, shortage, or other discrepancy, or the value of repairs or replacement, including unearned freight charges, where applicable, on a single bill of landing or other transportation document, does not exceed $50, Government agencies are authorized, but not required, to observe a minimum of $50 or less in processing loss and damage claims against carriers or forwarders and to absorb losses of $50 or less.

(b) When the total value of the loss, damage, shortage, or other discrepancy, or the value of repairs or replacement, including unearned freight charges, where applicable, on a single bill of lading or other transportation document exceeds the agency's minimum of $50 or less, the receiving activity shall prepare Standard Form 361, Transportation Discrepancy Report, as soon as possible, but no later than 45 calendar days after receipt of the shipment or discovery of the discrepancy. Every effort shall be made to reconcile overages or shortages within 15 calendar days after discovery. (Suspected pilferage, theft, or loss during transit of narcotics, hazardous articles, or sensitive materials, regardless of dollar value, shall be reported to the appropriate agencies within 24 hours in accordance with paragraphs (c), (d), and (e) of this section.) Any photographs taken as documentary evidence (see § 101-40.701(d)) should be attached to the discrepancy report to support claim action. Standard Form 361 (SF 361) (see § 101-40.4901) is approved by the Office of Management and Budget under OMB control number 3090-0093. Guidelines for the preparation of SF 361 are contained in § 101-40.4901-361-1 (See the GSA handbook, Discrepancies or Deficiencies in GSA or DOD Shipments, Materials, or Billings (subpart 101-26.8) for specific requirements for reporting discrepancies in shipments from GSA or DOD.) Losses of $50 or less for which no claims have been filed shall be absorbed by Government agencies.

(c) Pilferage, theft, or loss, regardless of dollar value, occurring in a shipment of narcotics or other controlled substances (as identified in 21 CFR 1308.11 through 1308.15), shall be reported by telephone within 24 hours after discovery to the agency or activity responsible for the shipment, and SF 361 shall be prepared and distributed immediately to any addressees as may be required by the agency's regulations. In addition, persons who are registered with the Drug Enforcement Administration (DEA) pursuant to 21 CFR Part 1301 are required to complete DEA Form 106, Report of Theft or Loss of Controlled Substances, as prescribed in 21 CFR 1301.74(c).

(d) Pilferage, theft, or loss regardless of dollar value, occurring in a shipment of ammunition, explosives, or other hazardous articles (as identified in 49 CFR Part 172) shall be reported by telephone within 24 hours after discovery to the agency or activity responsible for the shipment. In addition, SF 361 shall be prepared and distributed immediately to any addresses as may be required by the agency's regulations.

* * * * *

61. Section 101-40.703-2 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 101-40.703-2 Notice of visible loss, damage, or shortage.

(a) Usually, it is sufficient to notify the last line-haul or delivering carrier (not a drayage or switching carrier) of a shipment discrepancy by annotating the carrier's delivery receipt. This notation shall be entered on the consignee's copy of the delivery receipt. When the carrier's delivery receipt is not available at the time of delivery of the shipment, notification shall be made within 24 hours by telephone to the nearest office of the delivering carrier to provide the carrier an opportunity, if desired, to verify the loss, damage, or shortage. Except as provided in § 101-40.702-3(a), in every instance of damage or shortage, the agency shall notify the carrier on SF 361 within 7 calendar days of receipt of the shipment and invite the carrier to perform an inspection, except in those instances where it is known that the total amount of damage or shortage, or the value of repairs or replacement, including unearned freight charges, on a single bill of lading or other transportation document, does not exceed $50. If the carrier waives the opportunity to perform an inspection, the responsible Government employee receiving the shipment shall make a written record of the waiver, including the date the request for inspection was made and the name of the carrier representative who was contacted and

waived inspection. In the instance of an international shipment by an ocean or air carrier, SF 361 shall be furnished the carrier before the property is removed from the carrier's possession, except as provided in § 101–40.702–3(b).

* * * * *

(d) When an entire shipment is lost, the consignee shall notify the origin carrier by telephone and use SF 361 to confirm the notification.

62. Section 101–40.703–3 is revised to read as follows:

§ 101–40.703–3 Notice of concealed loss, damage, or shortage.

(a) *Domestic shipments.* Except as provided in § 101–40.702–3(a), when loss, damage, or shortage that was not apparent at the time of delivery is subsequently discovered, the delivering carrier (not a drayage or switching carrier) shall be notified promptly by telephone and requested to inspect the property involved, except in those instances where it is known that the total amount of loss, damage, or shortage, including unearned freight charges, where applicable, on a single bill of lading or other transportation document, does not exceed the agency's minimum of $50 or less and the agency chooses to absorb this loss. Unless there are extenuating circumstances, the notification and request for inspection shall be made by telephone not later than 15 calendar days from the date of receipt of the shipment and confirmed on SF 361. The SF 361 shall include the date the telephone request for inspection was made and the name of the carrier representative who was contacted. A copy of the notification and request for inspection shall be retained for possible claim purposes. Wrappings, packing materials, and any unopened packages shall be retained for the carrier's inspection. A copy of the carrier's inspection report shall be requested for use in determining liability or preparing a claim. If the carrier fails to make an inspection within a reasonable time as stated in § 103–40.703–2(c), or if the carrier waives the opportunity to perform an inspection, the carrier shall furnish an oral or written waiver as provided in SF 361.

(b) *International shipments.* When loss, damage, or shortage that was not apparent as the time of removal of the property from the carrier's possession is subsequently discovered when the packages are opened, the carrier shall be notified promptly in writing using SF 361. When an ocean carrier is involved, the written complaint shall be given to the carrier or its agency at the port of discharge within 3 calendar days of delivery (46 U.S.C. 1303(6)). When an international air carrier is involved, a written complaint to the carrier shall be given within 14 calendar days of receipt of the property (Article 26 of the Warsaw Convention, 49 Stat. 3020, as interpreted and applied by the Civil Aeronautics Board in its Order 78–8–10 of August 3, 1978). Written notice to ocean and international air carriers shall indicate a reasonable period of time for inspecting concealed loss or damage.

62. Section 101–40.704–1 is amended by revising paragraph (c)(2)(i) to read as follows:

§ 101–40.704–1 Transportation for account of the Government.

* * * * *

(c) * * *

(2) * * *

(i) If the carrier refuses to accept the rejected property, the agency shall request, in writing, that the carrier furnish a written statement of the reason for refusing the property. Upon receipt of the written refusal, the agency shall take appropriate action to dispose of the rejected property; or

* * * * *

64. Section 101–40.704–2 is revised to read as follows:

§ 101–40.704–2 Transportation for account of the supplier.

When the transportation is performed by the carrier for the supplier rather than for the Government (e.g., when property is purchased f.o.b. destination), accurate notations of discrepancies shall be made on the carrier's delivery receipt and the consignee's copy of the carrier's delivery receipt or freight bill to assist the supplier in filing claims for transportation losses. The carrier's driver or representative shall be requested to sign the notations of discrepancies. Prompt notification on SF 361 shall be furnished to the supplier or to the agency contracting officer as individual agency regulations may provide. The notification shall include supporting documents; i.e., a copy of the annotated delivery receipt, photos, carrier's inspection report, or written waiver. (See Discrepancies or Deficiencies in GSA or DOD Shipments, Material, or Billings (FPMR 101–26.8) with regard to damage to stock or nonstock items procured from GSA for direct delivery.)

65. Section 101–40.705 is amended by revising paragraph (b) to read as follows:

§ 101–40.705 Disposition of overages and astray or misconsigned shipments.

* * * * *

(b) If excess freight on one bill of lading is identical with a reported shortage on another bill of lading, the excess or overage shall be used to offset the reported shortage. If excess freight cannot be identified or used to offset other shortages within 7 calendar days after the date of discovery, the consignee shall use SF 361 to request disposition instructions from the consignor or shipper and shall convey these instructions to the delivering carrier.

* * * * *

66. Section 101–40.707–1 is revised to read as follows:

§ 101–40.707–1 Transportation for account of the supplier.

When the transportation is performed by the carrier for the supplier rather than for the Government (e.g., when the property is purchased f.o.b. destination), determination of liability for discrepancies in shipment will be resolved between the carrier and the supplier. However, in such instances the Government receiving activity shall make accurate notations of discrepancies on the carrier's delivery receipt or freight bill, and shall use SF 361 to furnish a report of the discrepancies to the supplier, or to the agency contracting officer as individual agency regulations may provide, to assist the supplier in resolving the discrepancies. The report shall include supporting documents; i.e., a copy of the annotated delivery receipt, photos, inspection report, or written waiver.

67. The heading of § 101–40.709, and paragraphs (a), (b), and (c) are revised to read as follows:

§ 101–40.709 Time limitations for filing claims.

* * * * *

(a) *Domestic shipments.* (1) Claims for loss or damage to shipments transported by carriers subject to the Revised Interstate Commerce Act (49 U.S.C. 10101, et seq., Pub. L. 95–473, October 17, 1978, as amended) shall be filed within the specified limits required by law, the terms of the bill of lading or other contract of carriage, and all tariff provisions applicable thereto. Pursuant to 49 U.S.C. 11707(e), bills of lading normally issued by rail and motor carriers specify that written claim be made upon the carrier within 9 months after delivery of property damaged or within 9 months following the time when delivery of property should have been made, and that suit shall be instituted within 2 years from the date the carrier or its agent notifies the claimant in writing that the specified claim is

disallowed in whole or in part. Neither limitation is applicable to shipments made on Government bills of lading, or commercial bills of lading to be converted to Government bills of lading, or commercial bills of lading subject to the terms of the Government bill of lading. (See § 101–41.302–3(g) for exemption authority.)

(2) Claims for loss or damage to shipments moving by domestic air carriers shall be filed within the limits prescribed on individual carrier's air waybills.

(b) *Ocean shipments.* The Carriage of Goods by Sea Act (46 U.S.C. 1303(6), as amended) imposes a 1-year limitation for bringing court action against ocean carriers for loss or damage.

(c) *International air shipments.* Complaints of loss or damage shall be submitted in writing to the international air carrier within the following time limits set by Article 26 of the Warsaw Convention (49 Stat. 3020, as amended):

(1) Claims for visible damage to goods must be filed as soon as possible following discovery of the damage but within 14 days from receipt of the goods;

(2) Claims for other damage to goods must be filed within 14 days from the receipt of goods;

(3) Claims for nondelivery of goods must be filed within 120 days from the date of the issue of the air waybill; and

(4) A 2-year limitation is imposed by Article 29 of the Warsaw Convention (49 Stat. 3021) for bringing court action against the carrier for loss or damage to international air shipments.

68. Section 101–40.710 is revised to read as follows:

§ 101–40.710 Processing claims against carriers.

(a) When the transportation is for the account of the Government (see § 101–40.707–2) and when it is determined that the carrier is responsible for loss or damage to a shipment (other than household goods), a claim shall be prepared on Standard Form 362, U.S. Government Freight Loss/Damage Claim, and forwarded in duplicate to the appropriate carrier with the necessary supporting documents; e.g., delivery receipts, photographs, inspection reports, except as otherwise provided in § 101–407.11. (See 49 CFR Parts 1005 and 1056 for additional regulations concerning processing of claims against carriers subject to the Revised Interstate Commerce Act.) Standard Form 362 (see § 101–40.4901) is approved by the Office of Management and Budget under OMB control number 3090–0113.

(b) Claims for loss and damage to household goods shipments moving on a GBL shall be prepared on claim forms furnished by the carriers.

(c) The appropriate carrier against which the claim shall be filed is—

(1) Usually the destination line-haul carrier (not the drayage company or switching carrier performing the delivery service for the destination line-haul carrier) in instances of domestic freight shipments made on Standard Form 1103 or a commercial bill of lading converted to a Government bill of lading or subject to the terms and conditions of the Government bill of lading;

(2) The household goods carrier specified on Standard Form 1203; or

(3) Usually the origin carrier on ocean or international air shipments. When it is conclusively known on which carrier's line the loss or damage occurred, the claim may be filed against that carrier. When no part of the shipment has been delivered, the claim would normally be filed against the carrier which accepted the shipment.

69. Section 101–40.711–1 is revised to read as follows:

§ 101–40.711–1 Claims against domestic carriers.

Formal claims (Standard Form 362 with supporting documents) shall be filed with domestic carriers within the time limits noted in § 101–40.709.

(a) Rail carriers, motor carriers, inland water carriers, domestic forwarders, and other carriers subject to the Interstate Commerce Act (ICA), are required under 49 CFR Subpart 1005.3 to acknowledge receipt of a formal claim in writing to the claimant within 30 days after receipt. In addition, 49 CFR Subpart 1005.5 requires carriers which receive a written claim for loss or damage to property transported to pay, decline, or make a firm compromise settlement in writing to the claimant within 120 days after receipt of the claim by the carriers. If the claim cannot be processed or disposed of within the initial 120 days, the carriers at that time and at the end of each succeeding 60-day period, while the claim remains pending, shall advise the claimant in writing of the status of the claim and the reason for the delay in making final disposition thereof.

(b) When any carrier fails to dispose of a loss or damage claim within a reasonable period of time, agencies shall collect the claim by setoff action; i.e., withholding payments from amounts otherwise due and payable to the carrier for transportation and related services. Earlier collection by setoff may be made if it is known that a carrier is involved in a bankruptcy, insolvency, or relocation proceeding, and it is clearly in the Government's interest to do so (4 CFR Parts 102 through 105).

70. Section 101–40.711–2 is amended by revising the introductory text to read as follows:

§ 101–40.711–2 Claims against ocean and international air carriers.

Regulations of the General Accounting Office (Chapter 13, § 86.1, GAO Policy and Procedures Manual for Guidance of Federal Agencies) require that:

* * * * *

71. Section 101–40.712 is revised to read as follows:

§ 101–40.712 Referral of loss and damage claims to the General Accounting Office or to the Department of Justice.

Loss and damage claims which cannot be collected, compromised, or terminated in accordance with 4 CFR Parts 102 through 104 shall be determined uncollectible and reported to the General Accounting Office or the Department of Justice for appropriate action under criteria established by GAO under 4 CFR Part 105.

72. Subpart 101–40.49 is revised to read as follows:

Subpart 101–40.49—Forms

§ 101–40.4900 Scope of subpart.

This subpart provides the means for obtaining forms prescribed or available for use in connection with the subject matter covered in Part 101–40. These forms are designed to provide uniform methods of requesting and transmitting transportation advice and assistance, uniform documentation of transactions between Government agencies, the Government and the transportation industry, and related industries.

§ 101–40.4901 Standard forms; availability.

Standard forms referenced in this part, unless otherwise provided in the section prescribing the form, may be obtained by submitting a requisition in FEDSTRIP format to the GSA regional office providing support to the requesting agency.

§ 101–40.4901–361–1 Guidelines for preparation of Standard Form 361, Transportation Discrepancy Report (Rev. 3–84).

See § 101–40.4901 for information on obtaining Standard Form 361.

Section A

General

a. The March 1984 edition of Standard Form 361, Transportation Discrepancy Report, requires the use of codes for certain information. A stub attached to the top of the form provides instructions concerning where to locate these codes for civilian agencies and the Department of Defense (DOD). The codes furnished in this section are uniform

for civilian agency use in preparing the Transportation Discrepancy Report (TDR).

b. The TDR is a two part form. Part I covers blocks 1 through 33, and part II covers blocks 34 through 47. Part I is used to request information from the shipper, give notification to the carrier concerning any discrepancy in the shipment, or report any miscellaneous problem which interferes in the timely and proper movement of freight. The proper block indicating the type of discrepancy being reported should be checked. After part I has been completed and all supporting documentation for claim has been assembled, part II will be used to support formal claims filed with the carrier/supplier. The information as contained in Part II will not be disclosed to the carrier/supplier. Blocks 46 and 47 are primarily for use by DOD.

Block Details. The following are detailed instructions for completing the TDR.

Block Number, Title, and Data Entry

1. *DATE.* Current Julian date on which report is prepared; e.g., January 30, 1984, would be entered as 4030.

2. *REPORT NUMBER.* Activity address code (AAC), if assigned, of the reporting activity and a 4-digit number (0001–9999) for each TDR issued within the calendar year.

3. *TO.* Name and address (including ZIP Code) of the office or carrier to which the TDR is to be mailed.

4. *REPORTING ACTIVITY.* Name and address (including ZIP Code) of the reporting activity.

5. *CONSIGNOR.* Name, address, activity address code (if assigned), and ZIP Code of the activity making or directing the shipment.

6. *CONSIGNEE.* Name, address, activity address code (if assigned), and ZIP Code of the activity scheduled to receive the shipment.

7. *SHIPPER.* Name, address, activity address code (if assigned), and ZIP Code of the activity physically making shipment for the account of the consignor. Where the shipper is the consignor, enter "Same as block 5."

8. *CARRIER ROUTING AND IDENTIFICATION.* Enter Standard Carrier Alpha Code(s) (SCAC) from the transportation document in the proper sequence in the shaded blocks. Enter name of carrier(s), identification number of car, truck, trailer, or the name of the vessel. For containers, show the trailer/container number.

9. *POINT OF ORIGIN.* Leave blank unless different than block 5.

10. *CARRIER'S PRO/FREIGHT BILL NO.* Copy the number from the carrier's delivery receipt.

11. *DESTINATION.* Leave blank unless different than block 6.

12. *BILL OF LADING NO./TYPE.* Enter the number and indicate the type, i.e., GBL (Government bill of lading) or CBL (commercial bill of lading).

13. *MODE CODE.* Choose correct code from section B.

14. *DATE CARRIER SIGNED FOR SHIPMENT.* Julian date that the carrier signed for shipment.

15. *DATE CONSIGNEE RECEIVED SHIPMENT.* Julian date of receipt of shipment. If the shipment is "all short," leave blank.

16. *DATE DISCREPANCY DISCOVERED.* Enter the Julian date of discovery.

17. *DATE CARRIER NOTIFIED.* Julian date on which the commercial carrier was first notified and the manner notified; e.g., "4133, telephone."

18. *NAME OF PERSON CONTACTED.* Enter the name and telephone number of the person contacted at the carrier.

19. *SEAL NUMBERS AND CONDITION.* Place an "X" in the proper block to show seal numbers and condition. Include an explanation when there is a variance between the seal number(s) shown on the transportation document and the seal(s) as affixed to the carrier's vehicle.

20. *ACQUISITION DOCUMENT AND/OR TRANSPORTATION CONTROL NO.* Applicable acquisition document number; e.g., requisition or purchase request and/or transportation control number.

21. *COMMODITY DESCRIPTION AND/OR NATIONAL STOCK NO. (NSN).* Noun description of commodity, and NSN or part number.

22. *TYPE OF PACK.* Choose the correct code from section C.

23. *QUANTITY DISCREPANT (PIECES).* Actual number of pieces of discrepant freight as evidenced by the applicable bill of lading or governing transportation document.

24. *TYPE AND CAUSE CODE.* Show the correct code from section D which will most clearly identify the type and cause of the discrepancy.

25. *UNIT OF ISSUE.* Show the 2-position alpha abbreviation of the type of unit under which the material was issued. See the shipping docket/packing list.

26. *UNITS BILLED/SHIPPED.* Show the actual number of units of issue billed (invoiced) or shipped as evidenced by the applicable shipping document/packing list.

27. *DISCREPANT UNITS.* Actual number of issue units discrepant.

28. *DISCREPANT WEIGHT.* Show the total weight for the discrepant pieces in block 23.

29. *VALUE OR COST OF REPAIRS.* Actual value of loss sustained or cost of repairs, including transportation to and from the repair shop, cost of estimates, etc. For nonrepairable damage, use the replacement cost. Enter value of material when reporting over or astray freight.

30. *REMARKS.* Use this block to request information needed in the investigation of the discrepancy, to notify the carrier of a discrepancy in the shipment, or to report miscellaneous problems for correction by the shipper. Include photographs (if available) or any document the shipper or carrier may not have that will aid in a reply. For miscellaneous problems not involving claim, provide detailed information and indicate responsibility. When the discrepancy involves classified/protected/hazardous material, provide additional details such as security classification, nature of hazardous material violation, etc.

31. A. *NAME OF PREPARER.* Self-explanatory.

B. *TITLE.* Self-explanatory.

C. *TELEPHONE NO.* Show both the commercial and Federal Telephone System (FTS) telephone number of the persons signing the form.

D. *SIGNATURE.* Self-explanatory.

32. *REPLY.* Use this block to reply to any questions asked in block 30 or to furnish any information to aid in the investigation of the discrepancy.

33. A. *NAME OF RESPONDENT.* Self-explanatory.

B. TELEPHONE NO. Show both the commercial and FTS telephone number of the person signing in block 33D.

C. *ADDRESS.* Show official address.

D. *SIGNATURE.* Self-explanatory.

E. *DATE.* Julian date of reply.

34. *THIS IS A SURVEY DOCUMENT.* Place an "X" in the proper block.

35. *DATE.* Julian date on which part II is completed.

36. *TO.* Name and address (include ZIP Code) of the office to which the TDR claim package is to be mailed.

37. *RESPONSIBILITY.* The transportation officer or appropriate receiving personnel would normally make this determination based on findings and factual evidence available, checking the appropriate block. When there is insufficient evidence to make such a determination, check "Other" and enter "Unknown."

38. *EXCEPTION NOTED ON CARRIER'S DELIVERY RECEIPT.* Place an "X" in the proper block.

39. *DOCUMENT ATTACHED?.* Place an "X" in the proper block, and list the documents in block 43.

40. *PHOTOGRAPH ATTACHED?.* Place an "X" in the proper block.

41. *INSPECTION DATA.* Place an "X" in the proper block. Attach required report or waiver, or provide oral waiver information in block 43.

42. *DISPOSITION DATA.* Place an "X" in the proper block. Attach the required documents or provide other explanation in block 43.

43. *REMARKS.* Provide detailed information or any other data which will aid the claims office in filing claim. Information or data shall deal with facts and shall not reflect personal opinions unless substantiated by documentation; e.g., affidavits or certified statements. List the documents attached to support the claim.

44. *DISTRIBUTION OF COPIES.* Name and address (including ZIP Code) of office to receive a copy.

45. *A. NAME OF PREPARER.* Self-explanatory.

B. *TITLE.* Self-explanatory.

C. *TELEPHONE NO.* Show both the commercial and FTS telephone numbers of the person signing in block 45D.

D. *SIGNATURE.* Self-explanatory.

46. *ACTION BY REVIEWING OFFICIALS.* Sections, A, B, C, and D under this block are for use in connection with inventory and financial adjustments of accounts in accordance with individual service/agency regulations. Sections E and F will be completed by an official authorized to approve the report for use as a survey document and/or inventory and financial adjustment of accounts or when individual agency or service regulations require

approval by an official other than the individual shown in block 45.

47. *ACTION BY CLAIMS OFFICE.* For use by claims office, as required (primarily for DOD).

Section B

Code	Mode Code (Block 13)
A	Motor, truckload.
B	Motor, less than truckload.
C	Van (unpacked, uncrated-personal or Government property).
D	Driveway, truckaway, towaway.
E	Bus.
F	Military Airlift Command (MAC).
G	Parcel post, surface.
H	Parcel post, air.
I	Government trucks, for shipment outside local delivery area.
J	Small package carrier.
K	Rail, carload*.
L	Rail, less than carload*.
M	Freight Forwarder.
N	LOGAIR (commercial air charter service—Air Force controlled).
O	Organic military air.
P	Through Government bill of lading (TGBL).
Q	Air freight, air express, air charter (commercial).
R	Expedited air freight.
S	Scheduled truck service (applies to contract carriage, guaranteed traffic routings and/or scheduled service).
T	Air freight forwarder.
U	Quicktrans (commercial air charter service—Navy controlled).
V	SEAVAN.
W	Water, river, lake, coastal (commercial).
X	Bearer, walk-thru (customer pickup of material).
Y	Intratheater airlift service.
Z	MSC (Military Sealift Command—controlled contract or arranged space).
2	Government watercraft, barge, lighter.
3	RORO (roll-on, roll-off) service.
4	ARFCOS (Armed Forces Courier Service).
5	United Parcel Service.
6	Military official mail (MOM).
7	Express mail.
8	Pipeline.
9	Local delivery by Government or commercial truck including deliveries between air or water terminals and adjacent activities. Within CONUS, the local delivery area is defined in tariffs governing local application of carrier service as filed with regulatory authorities.

*Includes trailer/container-on-flat-car (excluding SEAVAN).

Section C

Code	Type of Pack Code (Block 22)
BD	Bundle.
BE	Bale.
BG	Bag, burlap or cloth.
BL	Barrel.
BS	Basket.
BX	Box.
CA	Cabinet.
CB	Carboy.
CC	Household goods containers, wood, type 11 (Fed. Spec. PPP–B–580).
CL	Coil.
CN	Can.
CO	Container, other than CU, CW, or X.
CR	Crate.
CS	Case.
CT	Carton.
CU	Container, Navy cargo, transporter.
CW	Container, commercial highway lift (PTTC).
CY	Cylinder.
DB	Dufflebag.
DR	Drum.
EC	Engine container.
ED	Engine cradle or dolly.
FK	Footlocker.
HA	Hamper.
KE	Keg.
LS	Loose, not packaged.
MW	Multiwall container (formerly referred to as triple wall or tri-wall secured or attached to a warehouse pallet).
MX	Mixed (more than one type of shipping container).
PC	Piece.
PL	Pail.
PT	Palletized unit load (other than code MW).
RL	Reel.
RO	Roll.
RT	Roll-on/roll-off trailer.
SA	Sack, paper.
SB	Skid box.
SD	Skid.
SH	Sheet.
SL	Spool.
SW	Suitcase.
TB	Tub.
TK	Trunk.
TU	Tube.
UX	Unitized (unitized cargo on roll-on/roll-off vehicles is considered roll-on/roll-off).
VC	Van chassis.
VE	Vehicle.
VO	Vehicle in operating condition.
VS	SEAVAN-TOTE.
WR	Wrapped.
X———	Container, CONEX (second position, based on CONEX serial number, will be assigned as follows):
———0	00001 to 99999
———1	100000 to 199999
———2	200000 to 299999
———3	300000 to 399999
———4	400000 to 499999
———5	500000 to 599999
———6	600000 to 699999
———7	700000 to 799999
———8	800000 to 899999
———9	900000 to 999999
A———	MSCVAN (MSC leased/controlled SEAVAN or MILVAN).
Y———	MILVAN.
Z———	SEAVAN.
	(Second position identifies the loading data and loaded capacity as follows):
———A	Loaded to capacity by ocean carrier.
———B	Loaded to capacity by military terminal.
———C	Loaded to capacity by military shipping activity.
———D	Loaded to capacity by vendor/commercial supplier.
———E	Loaded to capacity by contract shipment consolidation facility.
———F	Loaded to less than capacity by military shipping activity, loading completed by contract shipment consolidation facility.
———3	Loaded to less than capacity by military shipping activity.
———4	Loaded to less than capacity by vendor/commercial supplier.
———5	Loaded to less than capacity by contract shipment consolidation facility.
———L	Loaded to less than capacity by military shipping activity, loading completed by military terminal.
———M	Loaded to less than capacity by vendor/commercial supplier, loading completed by military terminal.
———N	Loaded to less than capacity by contract shipment consolidation facility, loading completed by military terminal.
———T	Loaded to less than capacity by military shipping activity, loading completed by ocean carrier.
———U	Loaded to less than capacity by vendor/commercial supplier, loading completed by ocean carrier.
———V	Loaded to less than capacity by contract shipment consolidation facility, loading completed by ocean carrier.
———W	Loaded to less than capacity by vendor/commercial supplier, loading completed by contract shipment consolidation facility.
———Z	Empty MILVAN or SEAVAN.

Section D

Code	Type and Cause Code (Block 24)
	ASTRAY
A3	Incomplete marking or missing label or tag.
A4	Defaced or illegible marking.
AA	Unknown.
	OVERAGE
O5	Improper documentation.
O3	Incomplete marking or missing label or tag.
O4	Defaced or illegible marking.
OK	Improper loading or stowing.
OO	Unknown.
	SHORTAGE
SL	Leakage, spoilage, or evaporation.
S5	Improper documentation.
ST	Theft.
SP	Pilferage.
SI	Status "W" cargo (MTMC terminal use only).
SK	Improper loading or stowing.
SS	Unknown.
	DAMAGE
DF	Fire.
DK	Improper loading, stowing, lashing, blocking, and bracing.
D6	Materials handling equipment.
D1	Marine Casualty.
DG	Spoilage.
DQ	Rough handling.
D2	Stevedoring.
DE	Water damage.
DW	Wreck.
DV	Vandalism.
DZ	Concealed damage.
DD	Unknown.
	OTHER
XB	Broken, missing, improper, or inadequate seals.
XC	Special contract or carrier services not provided on unclassified or nonprotected cargo.
XH	Excess transit time.
X3	Incomplete marking or missing label or tag.
X4	Defaced or illegible marking.
XJ	Improper carrier handling, service, or equipment.
XK	Improper loading, stowing, lashing, blocking, or bracing (if no actual damage).
XL	Certification of hazardous material (DD Form 1387-2) missing or incorrect.
XM	Improper marking or labeling of dangerous or hazardous material.
XN	Misconsignment.
XR	Government transportation regulations, carrier tariff or tender agreements, not observed on classified or protected material.
XS	Signature Security Service violations.
XX	Not specified above (described in remarks).

§ 101–40.4902 GSA forms; availability.

(a) GSA forms referenced in this part are for optional use by executive agencies; however, their use is recommended in the interest of efficiency and economy in Government operations.

(b) GSA forms may be obtained initially from GSA National Forms and Publications Center, Box 17550, 817 Taylor Street, Fort Worth, Texas 76102–0550. Agency field or regional offices should submit future requirements to their Washington, DC headquarters office which will forward consolidated annual requirements to the GSA National Forms and Publications Center.

§ 101–40.4903 Optional forms; availability.

(a) Optional Form 280 (Rev. 3–80), Uniform Tender of Rates and/or

Charges for Transportation Charges, is designed to expedite the handling of rate tenders.

(b) Courtesy copies of Optional Form 280 may be obtained from the General Services Administration, Federal Supply Service, Office of Policy and Agency Liaison, Regulations and Policy Division (FFY), Washington, DC 20406. Carriers may duplicate this form or have it printed commercially.

Dated: June 2, 1986.

T.C. Golden,

Administrator of General Services.

[FR Doc. 86-15005 Filed 7-2-86; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 14

Administration of Grants; Audits of State and Local Governments

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule with request for comment.

SUMMARY: This regulation implements the Single Audit Act of 1984 within FEMA on an agency-wide basis. This regulation requires governments that receive financial assistance from FEMA to comply with OMB Circular A-128. That circular provides Government-wide standards for implementing the Act and replaces Attachment P to OMB Circular A-102. Attachment P contained the previous Federal policy on non-Federal audits of governmental recipients of Federal financial assistance.

EFFECTIVE DATE: The final rule is effective July 3, 1986 publication. Comments must be received by September 2, 1986.

ADDRESS: Send documents to Rules Docket Clerk, Office of General Counsel, Room 840, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472. FEMA will share comments with other agencies.

FOR FURTHER INFORMATION CONTACT: Jane Altenhofen (202) 646-3905 Office of Inspector General, Room 824, Federal Emergency Management Agency, 500 C Street SW., Washingon, DC 20472.

SUPPLEMENTARY INFORMATION: In its program regulations (particularly those in Subchapters D and E of Chapter I of Title 44) FEMA has required State and local governments that receive FEMA grants or cooperative agreements to comply with Attachment P to OMB Circular A-102. Attachment P required each recipient government to have itself periodically audited on an organizations-wide basis by independent non-Federal auditors.

In October 1984, the Single Audit Act of 1984 was enacted. The Act continues the same basic policies as Attachment P, although it differs in some details. The Act requires the Director, OMB, to prescribe policies, procedures and guidelines to implement the Act. OMB did that by issuing Circular A-128 "Audits of State and Local Governments".

OMB published a draft of Circular A-128 for public comment in the **Federal Register** at 49 FR 50134-50138, 12/26/84. After considering comments received, OMB issued the Circular in final form as of April 12, 1985. That version of the Circular was published in the **Federal Register** at 50 FR 19114-19119, 5/6/85. It superseded Attachment P to OMB Circular A-102.

The Act also requires Federal agencies such as FEMA to issue whatever amendments are necessary to conform their regulations to the OMB implementation. This regulation carries out that statutory requirement.

The Single Audit Act and OMB Circular A-128 apply to fiscal years of state and local governments that begin after December 31, 1984. For audit purposes, the Act divides state and local governments into three categories, as follows:

1. Governments that receive $100,000 or more in total Federal financial assistance in one of its fiscal years must, for that year, comply with the audit requirements of the Act rather than any audit requirements of the particular programs which their funds are derived.

2. Governments that receive $25,000 or more, but less than $100,000 in total Federal financial assistance in a fiscal year, may choose to have an audit made in accordance with either the Single Audit Act or the statute(s) and regulations governing the program(s) from which their funds are derived.

3. Governments which receive less that $25,000 in total Federal financial assistance in a fiscal year are exempt both from the Single Audit Act and from any audit requirements of the Federal programs from which their funds are derived.

For purposes of the foregoing, total Federal financial assistance includes not only Federal funds received directly from the Federal Government, but also Federal funds received as a subrecipient.

OMB Circular A-128 requires recipients to furnish copies of their audit reports to each Federal agency from which they receive financial assistance. To minimize the burden on FEMA recipients, this amendment specifies that copies for FEMA are to be submitted only to the responsible FEMA District Inspectors General. These officials will distribute copies as appropriate within the Agency.

Executive Order 12291

The Agency has determined that this rule is not a major rule under Executive Order 12291. The major substantive difference between Attachment P and Circular A-128 is the exemption of small recipients (those receiving total awards of less than $25,000 a year). Therefore a net reduction in impact is expected.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant impact on a substantial number of small entities. Since audits of small organizations are not of substantial expense and since most entities receiving grants have audits performed for their own purposes, the elimination of coverage discussed above is unlikely to create a significant economic impact on small entities although, of course, the amount of audit work and paperwork will be decreased. Therefore, a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB Control Number 3067-0149. Approval of information collection requirements not already approved by OMB will be obtained.

Waiver of Notice of Proposed Rulemaking

Notice of proposed rulemaking and delay of effective date have been found to be unnecessary in this matter and are hereby waived pursuant to 5 U.S.C. 533(b)(B). The reasons for this decision are as follows:

(1) The Single Audit Act of 1984 applies to recipient fiscal periods that begin after December 31, 1984. Delay in making this amendment effective would have no bearing on the effective date of the Act.

(2) Public comments on implementing the Act have been sought and considered by OMB in developing Circular A-128.

List of Subjects in 44 CFR Part 14

Administrative practice and procedure.

Accordingly, Title 44 of The Code of Regulations is amended by adding a new Part 14 as follows:

PART 14—ADMINISTRATION OF GRANTS: AUDITS OF STATE AND LOCAL GOVERNMENTS

Sec.

14.1 Scope of part.
14.2 Non-federal audits.

Appendix A to Part 14—OMB Circular A-128

Authority: Reorganization Plan No. 3 of 1978; E.O. 12127, E.O. 12148, 31 U.S.C. 7505.

§ 14.1 Scope of part.

(a) This part contains standards for non-Federal audits of recipients of financial assistance from the Federal Emergency Management Agency (herein called recipients). This includes, without limitation, assistance under the Disaster Relief Act of 1974 as amended, and the Federal Civil Defense Act of 1950, as amended.

(b) FEMA may not impose on recipients additional requirements concerning non-Federal audits. However, it may provide recipients with suggestions and assistance on this subject.

§ 14.2 Non-Federal audits

(a) *Governmental recipients.* Recipients that are governments shall comply with OMB Circular A-128 including any amendments published in the Federal Register by OMB. The Circular is codified verbatim as Appendix A to this part.

(b) *Grant or contract audits.* Recipients of $25,000 or more, but less than $100,000 in Federal financial assistance that choose not to have an organization wide single audit must conduct individual grant or contract audits on all FEMA awards over $25,000.

(c) *Submission of audit reports.* All copies of audit reports that a recipient is required under OMB Circular A-128 to submit to FEMA shall be addressed to the FEMA District Inspector General responsible for the FEMA Region in which the recipient is located. The FEMA Office of Inspector General will distribute copies as appropriate within the Agency. Recipients therefore are not required to send their audit reports to any FEMA officials other than the responsible District Inspector General.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

Appendix A—OMB Circular A-128, "Audits of State and Local Governments"

CIRCULAR NO. A-128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98-502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A-102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A-102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated Febuary 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98-502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that

has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and
—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,
—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and
—Amounts claimed or used for matching were determined in accordance with OMB Circular A–87, "Cost principles for State and local governments," and Attachment F of Circular A–102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A–110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal

agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A-87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a

proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,

—Withholding or disallowing overhead costs, and

—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395-3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,

Director.

Attachment—Circular A-128

Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

Dated: June 26, 1986.

Julius W. Becton, Jr.

Director.

[FR Doc. 86-15022 Filed 7-2-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 85-229; FCC 86-252]

Common Carrier Services; Replacing Structural Separation With Non-Structural Safeguards for the Provision of Enhanced Services

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: The Commission replaced the structural separation requirements for the provision of enhanced services by AT&T and the BOCs with certain nonstructural safeguards to prevent against improper cost shifting and discrimination against other enhanced service providers.

EFFECTIVE DATE: July 3, 1986.

FOR FURTHER INFORMATION CONTACT: William F. Maher, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Computer Inquiry Report and Order, CC Docket 85-229, FCC No. 86-252, adopted May 15, 1986, and released June 16, 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 also may be purchased from the Commision's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of the Report and Order

On August 16, 1985, the Federal Communications Commission (the FCC or the Commission) released a Notice of Proposed Rulemaking (the NPRM), CC Docket 85-229 (50 FR 33581, Aug. 22, 1985), proposing numerous changes to the "enhanced services" category created by the Second Computer Inquiry (Computer II) (77 FCC 2d 384). Prior to the release of the Third Computer Inquiry Report and Order (the Report and Order), the American Telephone and Telegraph Company (AT&T) and the Bell Operating Companies (the BOCs) were required to offer enhanced services through a subsidiary separate from the corporate entity providing basic services (the structural separation requirement).

In the Report and Order, the Commission concluded that the record in the *Computer III* proceeding strongly supports a finding that the inefficiencies and other costs to the public associated with the structural separation requirements for the provision of enhanced services substantially outweigh the benefits. Accordingly, it removed those requirements for AT&T and the BOCs subject to their compliance with nonstructural safeguards.

To achieve complete structural relief, AT&T and the BOCs will be required: To

(a) implement approved Open Network Architecture (ONA) Plans, to be filed by February 1, 1988, that satisfy Comparably Efficient Interconnection (CEI) requirements and additional unbundling requirements through a set of tariffed Basic Service Elements that support enhanced services offered by both carriers and their competitors; (b) file detailed cost allocation plans that comply with the requirements to be established in the pending Joint Cost proceeding (CC Docket 86–111, FCC No. 86–146); (c) adhere to modified versions of the existing network information disclosure requirements; and (d) adhere to requirements on the use of customer proprietary network information (CPNI).

During the interim period prior to implementation of ONA Plans, AT&T and the BOCs will be permitted to offer individual enhanced services on an unseparated basis by satisfying interim CEI, cost allocation, network disclosure and CPNI requirements. The CEI standards require a carrier's enhanced services operations to take under tariff the basic services in uses in offering unseparated enhanced services. Such basic services must be available to other enhanced services vendors and users under the same tariffs on an unbundled and functionally equal basis. Tariffed rates for CEI may include a cost-based element for distance-sensitive transmission costs and are required to include concentration costs. The carriers may not discriminate in favor of their own enhanced services operations in providing CEI and must file periodic reports to substantiate that nondiscrimination.

The Commission decided that the CEI requirements were designed to control potential discrimination against competitive enhanced service providers by ensuring that the BOCs and AT&T provide their competitors with access to basic services that is technically equivalent and comparable in price to the access they provide their own enhanced services. The efficacy of the CEI and ONA requirements in preventing discrimination was a key element in the Commission's conclusion that structural separation for AT&T and the BOCs should be eliminated.

The Commission affirmed the status of Voice Message Storage services as enhanced services. It also affirmed that Network Channel Terminating Equipment (NCTE) would continue to be treated as Customer Premises Equipment for regulatory purposes and that provision of NCTE by AT&T and BOCs would be subject to the same general regulations that apply to their provision of all other CPE.

The Commission deferred making a final decision on the proper regulatory treatment of protocol processing services. However, it clarified the applicable rules governing the provision by AT&T and the BOCs of such services pending the resolution of such issues in a concurrent Supplemental Notice of Proposed Rulemaking. First, the FCC will continue to maintain the current definition of enhanced services during the interim period. Second, the Asynchronous/X.25 Waiver Order (100 FCC 2d 1057) shall remain in effect for carrier provision of asynchronous/X.25 protocol conversion. Third, the X.25/X.75 Waiver Order (FCC No. 84–561) shall remain in effect for carrier provision of X.25/X.75 protocol conversion. And fourth, in order to provide other protocol processing functions, on a collocated or integrated basis, AT&T and the BOCs must comply with the nonstructural safeguards set out in the *Report and Order* including CEI.

In a concurrent action, the Commission asked for further comments on five topics so it will have a more complete record before taking further action.

The Commission concluded that AT&T and the BOCs are not small business entities for proposes of the Regulatory Flexibility Act.

Ordering Clauses

Accordingly, it is ordered, that pursuant to section 4(i), 4(j), 201–205, 218, 220, 403, and 404, of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 218, 220, 403, and 404, the policies, rules, and requirements set forth herein are adopted.

It is further ordered, that the motions for leave to file late comments filed by the Electronic Mail Association, the North American Telecommunications Association, United Cable Television Corporation, the Vermont Public Service Board, McCaw Cellular Communications, Inc., United Telephone Systems, and the North Dakota Public Services Commission are granted.

It is further ordered, that the action on delegated authority of the Chief, Common Carrier Bureau, in granting the Petition of the American Telephone and Telegraph Company for Limited and Temporary Waiver of 47 CFR 64.702. Regarding Its Provision of Unregulated Services Externally to the AT&T–C Network, is affirmed, and the Petitions for Review of that action filed by GTE Corporation and ADAPSO are denied.

List of Subjects in 47 CFR Part 64

Communications common carriers, Data processing service, Specialized service, Computer regulation, Tariff regulation.

William J. Tricarico,

Secretary.

[FR Doc. 86–14748 Filed 7–2–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–248; RM–4950; RM–5195]

Radio Broadcasting Services; Dadeville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 247A to Dadeville, AL, as that community's first FM service, in response to a proposal filed by James W. and Charles H. Watley, and denies a competing proposal for the channel at Wadley, AL, as requested by Bob Haynes. Action herein terminates this proceeding.

EFFECTIVE DATE: August 4, 1986. The window period for filing applications will open on August 5, 1986, and close on September 3, 1986.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–248, adopted June 13, 1986, and released June 27, 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.

1. The authority citation for Part 73 is revised to read:

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

2. Section 3.202(b) is amended by adding the following:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

City	Channel No.
Dadeville, AL	247A

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-15016 Filed 7-2-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 84-472; RM-4688, RM-4833, RM-4897]

Radio Broadcasting Services; Block Island and Middletown, RI, et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 296A to Fairhaven, Mass, as the community's first local service, at the request of Metter Broadcasting, Inc. and modifies the license of Station WOTB-FM, Middletown, RI to specify operation on Channel 262A in lieu of its present Channel 296A. The request of Tim G. English to allocate Channel 262A to Fall River, Mass. as the community's first local FM service and third local aural service, is denied. The request of Nick DePetrillo to allocate Channel 261A to Block Island, Rhode Island, as the community's second local FM service, is denied. With this action, the proceeding is terminated.

EFFECTIVE DATE: August 4, 1986. The window period for filing applications for Channel 296A at Fairhaven, Massachusetts will open on August 5, 1986, and close on September 3, 1986.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 84-472, adopted June 3, 1986, and released June 27, 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 contractor, 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]

1. The authority citation for Part 73 is revised to read:

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

2. Section 73.202(b) is amended by adding the following:

§ 73.202 Table of allotments.

* * * * *

(b) * * *

City	Channel No.
Fairhaven, MA	296A
Middletown, RI	262A
Newport, Rhode Island	

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-15015 Filed 7-2-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 60477-6077]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

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

ACTION: Notice to revised management measures.

SUMMARY: The Secretary of Commerce (Secretary) announces a revised harvest quota for chinook salmon in the commercial fishery from Cape Blanco, Oregon, to Point Delgada, California. This notice decreases the chinook quota for the commercial fishery from 68,200 fish to 67,000 fish by subtracting the number of chinook which were harvested over the subarea quota in the commercial fishery from Sisters Rocks to Chetco Point, Oregon. This action is intended to protect depressed runs of chinook salmon.

DATES: The revised commercial quota for chinook salmon from Cape Blanco, Oregon, to Point Delgada, California is effective at 0001 hours Pacific Daylight Time June 30, 1986. Comments on this notice will be received until July 18, 1986.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way, NE., Seattle, WA 98115-0070; or Mr. E.C. Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206-526-6150; or E.C. Fullerton, 213-514-6196.

SUPPLEMENTARY INFORMATION: In its preseason notice of 1986 management measures (51 FR 16520, May 6, 1986), NOAA announced that the ocean commercial fisheries between Cape Blanco, Oregon, and Point Delgada, California, would be managed not to exceed a harvest of 83,200 chinook in 1986. This overall quota is partitioned into three subareas and seasons.

The commerical fishery in one of the three subareas, from Sisters Rocks to Chetco Point, closed on June 6, 1986, when it was projected that the 7,500 chinook subarea quota would be reached. Actual landings through June 8, 1986, totaled 8,700 chinook in the subarea, a harvest of 1,200 chinook over the subarea quota.

The Secretary has determined that the commerical harvest quota for the area from Cape Blanco to Point Delgada should be reduced by the number of chinook overharvested in the Sisters Rocks to Chetco Point subarea. Accordingly, this notice decreases the commercial quota for the area from Cape Blanco to Point Delgada to 67,000 chinook salmon.

The Regional Director consulted with the Directors of the Oregon Department of Fish and Wildlife and the California Department of Fish and Game, who confirmed that the commercial fishery in State waters adjacent to this area of the FCZ will be managed in accordance with the revised quota.

Other Matters

This action is taken under § 661.21(b)(1) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: June 30, 1986.

Carmen J. Blondin,

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

[FR Doc. 86-15032 Filed 6-30-86; 3:13 pm]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 60477-6077]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of inseason adjustments and request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces the modification of a boundary restricting deliveries of mixed loads of chinook and coho or loads of coho-only salmon caught in the commercial fishery from Cape Perpetua to Cape Falcon, Oregon. The modification is necessary so that trollers from Cannon Beach, Oregon, approximately eight miles north of the management subarea, may deliver their catch to their home port. The intent of this action is to accommodate fishermen's needs without substantially or adversely affecting the carrying out of the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP).

DATES: The revised boundary for commercial salmon deliveries is effective at 0001 hours Pacific Daylight Time on July 1, 1986, through 2400 hours PDT on August 13, 1986. Comments will be received until July 15, 1986.

ADDRESS: Comments may be mailed to the Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way, NE., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206–526–6150.

SUPPLEMENTARY INFORMATION: The ocean salmon fisheries off Washington, Oregon, and California are managed under a framework FMP with implementing regulations at 50 CFR Part 661. An emergency rule (51 FR 18451, May 20, 1986) provides inseason management provisions through August 13, 1986.

The emergency rule authorizes changes to be made in 1986 management measures, including boundaries, if the adjustments are consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated Indian fishing rights, and the ocean allocation scheme in the FMP. The Secretary has determined that a change of boundary for commercial deliveries of salmon caught between Cape Perpetua and Cape Falcon is consistent with those criteria.

According to the 1986 preseason regulations (51 FR 16520, May 5, 1986), mixed loads of chinook and coho or loads of coho-only salmon caught in the commercial fishery between Cape Perpetua and Cape Falcon, Oregon, must be delivered in that subarea. This requirement is in effect from July 1 to July 20 and it may be extended for the season from July 23 until the coho quota is reached. The Oregon Fish and Wildlife Commission (OFWC) has recommended that this delivery restriction be modified to allow salmon caught in the management subarea to be landed in Cannon Beach, Oregon, a small community eight miles north of the management subarea. There are small numbers of dory-boat fishermen from Cannon Beach who would like to return to their home port to sell their fish.

The modification proposed by OFWC would not substantially or adversely affect the carrying out of the FMP since all salmon landed would count toward the coho quota for the management area south of Cape Falcon, Oregon. That coho quota probably will be met before the commercial seasons north of Cape Falcon open on August 2, so enforcement problems should be minimal.

The Regional Director consulted with the Chairman of the Pacific Fishery Management Council and the Director of ODFW regarding this modification of delivery requirements. The Director of ODFW confirmed that State delivery requirements will be modified in concert with these revised Federal regulations.

Revised Management Boundary

In the final 1986 salmon fishery management measures (51 FR 16520, May 5, 1986), on page 16523, footnote h(1) of Table 1 is revised to read as follows:

From July 1 through July 20: A single daily possession or landing per boat of 50 coho is permitted without chinook restrictions. For over 50 coho, chinook also must be possessed and landed and there cannot be more than two coho possessed or landed for each chinook possessed or landed over 50 coho. Mixed loads of chinook and coho and coho-only loads must be delivered between Cape Perpetua and 45°54'00" N. latitude (Cannon Beach). There are no restrictions on the place of delivery of chinook-only loads. Chinook salmon possessed or landed in the area may not be returned or transferred to any vessel engaged in the commercial salmon fishery.

Other Matters

This notice is provided under 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: June 30, 1986.

Carmen J. Blondin,

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

[FR Doc 86–15033 Filed 6–30–86; 3:13 pm]

BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 50720–5154]

Fishery Conservation and Management; Groundfish of the Gulf of Alaska

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish optimum yield (OY) allocated to hook-and-line gear in the Western Regulatory Area of the Gulf of Alaska will be achieved on July 3, 1986. A closure of the fishery for sablefish by hook-and-line gear is necessary to limit the harvest of sablefish by hook-and-line gear to the 55 percent of the OY that is permissible by Federal law in this Area. This closure is a management measure intended to allocate the sablefish resource between hook-and-line, trawl, and pot gear in the Western Regulatory Area as required by current regulations implementing the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: This notice is effective at noon, Alaska Daylight Time, July 3, 1986, until midnight, Alaska Standard Time, December 31, 1986. Public comments are invited on this closure until July 18, 1986.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the Alaska Regional Office, NMFS, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907–586–7230.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason adjustments of fishing seasons and areas. Regulations at § 672.22(a) specify that these adjustments will be made by the Secretary of Commerce (Secretary) under procedures set out in that section.

Section 672.2 defines three regulatory areas in the Gulf of Alaska. One of these is the Western Regulatory Area. The OY for sablefish in this area is 2,850 metric tons (mt). Section 672.24(b)(1) restricts the take of sablefish in this area by hook-and-line gear to 55 percent of the OY, or 1,568 mt.

About 20 hook-and-line vessels have fished for sablefish during the fishing season, which began on April 1, 1986. Landings through June 18, 1986, total 1,046 mt, leaving a balance of the OY allocated to hook-and-line vessels of 522 mt. The fleet will harvest this remainder with hook-and-line gear after noon on that date is prohibited in the Western Regulatory Area of the Gulf of Alaska. This closure is a management measure intended to implement the allocation of the sablefish resource provided under the FMP.

This closure will be effective after this notice is filed for public inspection with the Office of the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address above for 15 days following its effective date. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this closure's continued effect, modifying it, or rescinding it.

Other Matters

Allocation of the sablefish resource between hook-and-line, pot, and trawl gear in the Western Regulatory Area of the Gulf of Alaska, as required by the FMP, and the continued conservation of that resource will be jeopardized unless this closure takes effect promptly. NOAA, therefore, finds for good cause that advance opportunity for public comment on this notice is contrary to the public interest and that its effective date should not be delayed.

This action is taken under §§ 672.22 and 672.24 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: June 30, 1986.

Carmen J. Blondin,

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

[FR Doc. 86-15031 Filed 7-2-86; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 128
Thursday, July 3, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of marketing policy.

SUMMARY: This notice sets forth a summary of the preliminary draft of the 1986–87 marketing policy for lemons grown in California and Arizona. The preliminary draft marketing policy was discussed by the Lemon Administrative Committee, on June 24, 1986, which locally administers the marketing order covering California-Arizona lemons. The marketing policy contains information on crop and market prospects for the 1986–87 season.

DATE: Written suggestions, views, or pertinent information relating to the marketing of the 1986–87 California-Arizona lemon crop will be considered if received by July 17, 1986.

ADDRESS: Interested persons are invited to submit written statements in duplicate to: Docket Clerk, Room 2085–S, F&V, AMS, U.S. Department of Agriculture, Washington, DC 20250. Such submissions, should reference the date and page number of the **Federal Register** and will be made available for public inspection in the office of Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: Pursuant to § 910.50 of the marketing order covering lemons grown in California and Arizona, the Lemon Administrative Committee, hereinafter referred to as the "committee", is required to hold a marketing policy meeting not later than August 15 of each fiscal year and thereafter submit such marketing policy to the Secretary. The order authorizes volume and size regulations applicable to fresh shipments of lemons to domestic markets including Canada. Export shipments of lemons and lemons utilized in the production of processed lemon products are not regulated under the order.

The committee has prepared a preliminary draft marketing policy for the 1986–87 marketing season. The marketing policy is intended to inform the Secretary and persons in the industry of the committee's evaluation of supply and demand factors expected during the marketing season. This information is essential to the review and evaluation of committee recommendations for issuance of regulations. The committee evaluates market conditions and makes recommendations to the Secretary as to the quantity of lemons that can be shipped each week to domestic outlets during the season without disrupting markets. Under certain conditions, the committee may recommend size regulations applicable to fresh domestic shipments.

In the preliminary draft of its 1986–87 marketing policy, the committee projected the California-Arizona lemon crop at 48,535 cars (1,000 cartons at 37½ pounds net weight each equal one car). Last year's production is estimated to total 36,707 cars. The production area is divided into three districts. The current estimates by district (with last year's production in parentheses) are as follows: District 1—6,200 cars (5,775); District 2—26,000 cars (21,811); and District 3—16,335 cars (9,121).

It is expected that lemon sizes will be smaller than last year on the average. Fruit quality is expected to be good to excellent.

The committee estimates that 1986–87 shipments to domestic fresh market outlets, including Canada, may total 14,750 cars. 1985–86 shipments of fresh lemons to domestic markets are estimated to reach 14,900 cars. Fresh export shipments are expected to total 10,500 cars compared to 7,300 cars in 1985–86. Processing and other disposition is now forecast at 23,285 cars compared to 13,487 cars in 1985–86.

Fresh lemons face competition from other varieties of citrus fruit, lemon juice, lemonade, and a number of soft drink products. The California-Arizona lemon crop also is in direct competition with Florida and foreign lemons. Florida shipments of lemons are estimated at 700 cars for 1986–87. Imports of lemons vary from year to year, with about 622 cars imported thus far in 1985–86, mostly from South America and Spain.

With respect to the use of periods of open movement, the committee, in its preliminary draft of the 1986–87 marketing policy, observed that there are myriad variables which can either positively or adversely affect marketing conditions. Thus, if, during the fiscal year, supply and demand conditions are such that open movement is the appropriate recommendation, the committee would present such a recommendation to the Secretary.

Section 910.50 of the marketing order read as follows:

"Each year not later than August 15 of the federal year (or such later date as the committee may establish with the approval of the Secretary) the committee shall hold a marketing policy meeting and shall thereafter submit to the Secretary its marketing policy for suc fiscal year, to continue in force until revised, or superseded by the adoption of a new marketing policy. The marketing policy shall contain the following information: (a) The available supplies of lemons in each prorate district, including estimated quality and composition of size; (b) the estimated utilization of the crop, showing the quantity and percentages of the crop that wil be marketed in domestic, export, and byproduct channels, together with quantities otherwise to be disposed of; (c) a schedule of estimated weekly shipments to be recommended to the Secretary during the fiscal year; (d) level and trend of consumer income; (e) estimated supplies of competitive citrus commodities; and (f) any other pertinent factors bearing on the marketing of lemons. In the event that it becomes advisable to substantially modify the marketing policy the committee shall submit to the Secretary a revised marketing policy or a new marketing policy setting forth the information as required in this section."

Based on the most recent data available, it appears that the 1985–86 season average fresh equivalent on-tree parity price for California-Arizona lemons will average $5.35 per carton. The projected season average parity price for the 1986–87 season is $5.95 per

carton. Due to several factors that occurred during the 1985–86 season, prices averaged higher than in earlier recent years and exceeded parity. The Agricultural Marketing Service (AMS) is currently evaluating the 1986–87 price outlook and when this process is completed will use the results of this evaluation in reviewing the committee's final marketing policy for the 1986-87 season.

In order to provide an opportunity for public input into regulatory actions, the Department will accept written views and information pertinent to the draft marketing policy and the need for, or level of, regulation for the 1986–87 season. All such information should be received by July 17, 1986.

Publication of this summary of the marketing policy is to provide information as to potential regulations. This action does not create any legal obligations or rights, either substantive or procedural.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemon.

PART 910—[Amended]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

Dated: July 1, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 86–15221 Filed 7–2–86; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1864, 1900, 1903, 1944, 1951, 1955, 1956, 1962, and 1965

Implementations of Provisions of the "Food Security Act of 1985" (Pub. L. 99–198) for Debt Settlement-Farmer Programs and Single Family Housing

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) proposes to issue a new regulation for settlement of FmHA debts for Farmer Program and Single Family Housing (Section 502 and 504 of the "Housing Act of 1949") loans. The major reason for issuing the new regulation is to implement Section 1309 of the "Food Security Act of 1985" (Pub. L. 99–198). The intended major effects of the action is to increase the State Director's debt settlement approval authority and remove many of the restrictions and time intervals required in the existing debt settlement regulation.

DATES: Written comments must be received on or before September 2, 1986.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: William Krause, Director, Emergency Loan Division, Farmers Home Administration, USDA, Room 5420, Washington, DC 20250, Telephone: (202) 382–1632.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor, because there will not be an anual effect on the economy of $100 million or more; a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or significant adverse affects 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.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Emergency Loans, Farm Operating Loans, Farm Ownership Loans and Low Income Housing Loans are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loans Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Program Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Owership Loans
10.410—Low Income Housing Loans (Section 502 Rural Housing Loans)
10.416—Soil and Water Loans

Environmental Impact Statement

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

Paperwork Reduction Act

Under the Paperwork Reduction Act and 5 CFR Part 1320, the Farmers Home Administration has submitted the information collection requirements contained in this regulation for review by the Office of Management and Budget (OMB).

Background

The settlement of Farmer Program and Single Family Housing Program debts owed the United States and administered by the FmHA is governed mainly by the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1921–1996). The major purpose for revising the FmHA regulations at this time is to implement section 1309 of the Food Security Act of 1985 (Pub. L. 99–198) which provides greater flexibility to the Secretary in administering debt settlement claims.

Difficult conditions in the farm sector have placed a number of farmers and their families under severe financial stress. While some farms of all sizes have been experiencing financial stress, these problems have been most pronounced for family-size farms that depended on loans from FmHA as a lender of last resort. The prolonged period of excess supply and weak commodity demand has kept farm income under pressure, and has reduced the value of farm assets. These borrowers have total debts that exceed the value of their assets; thus these borrowers are insolvent and face serious financial problems. The implementation of these proposed changes will provide greater flexibility to compromise, adjust, cancel, or charge-off of certain debts owed FmHA.

Highlights

The Farmers Home Administration proposes to amend its insured Farmer Program and Single Family Housing loan servicing regulations to implement changes authorized or required by "The Food Security Act of 1985," Pub. L. 99–198 (99th Congress, 1st Session 1985, and where applicable certain other program regulations to update certain references and forms to correct certain inconsistencies, to delete obsolete material, and clarify the wording in a few paragraphs in various regulations. Such changes are mainly for administrative purposes and are published at this time for convenience.

A summary of proposed major changes are as follows:

1. Part 1864 (FmHA Instruction 456.1) "Debt Settlement", will remove settlement of debts owed under Farmer Programs and Single Family Housing (Section 502 and 504 of the "Housing Act of 1949") programs to be covered under a new Subpart B of Part 1956 of this chapter.

2. Subpart B of Part 1900 is to be amended to reference the new Subpart B of Part 1956 of this chapter.

3. Subpart A of Part 1903 is to be amended to reference the new Subpart B of Part 1956 of this chapter.

4. Subpart A of Part 1944 is to be amended to reference the new Subpart B of Part 1956 of this chapter.

5. Subparts A, B and G of Part 1951 are to be amended to reference the new Subpart B of Part 1956 of this chapter.

6. Subpart A of Part 1955 is to be amended to provide that if the FmHA County Committee recommends release of liability, the official who accepts a voluntary conveyance of security property may approve the release of liability. This section is also to be revised to clarify that any appeal must be concluded before cases are referred to the Office of General Counsel (OGC) for processing of foreclosure; and removes the requirement that release of liability where the FmHA debt secured by chattels, less their market value, exceeds $25,000 must be signed by the FmHA Administrator.

7. Subpart B of Part 1956 will be added. The policy and authority for the settlement of debts and claims for Farmer Programs and selected Rural Housing loans in Part 1864 (FmHA Instruction 456.1) will now be in Subpart B of Part 1956. Provisions of section 1309 of the "Food Security Act of 1985" (Pub. L. 99–198) are to be added; and the general policies will be further clarified.

The proposed major changes from Part 1864 are:

(a) Section 1956.57(b) provides guidance on collecting information for debt settlement.

(b) Section 1956.57(c) changes the maximum period of time which payments on adjustment offers are to be made from 3 to 5 years.

(c) Section 1956.57(g) provides that a settlement will not be approved when an investigation of fiscal irregularity is pending.

(d) Section 1956.57(g)(3) provides guidance on handling the settlement of claims referred to the United States Attorney and judgments obtained by the United States Attorney.

(e) Section 1956.57(j) provides additional guidance on the settlement of accounts where joint debtors are involved.

(f) Sections 1956.58 (a) and (b) increase the State Director's debt settlement approval authority and clarify the processing of debt settlement offers after approval.

(g) Section 1956.58(d) clarifies when debtors will be notified of a rejected debt settlement offer.

(h) Sections 1956.66 (a)(1) and (b) provide additional guidance for determining the value of security when evaluating compromise or adjustment offers and eliminate the $20,000 limitation on debts that can be compromised when a borrower is able to pay in full but refuses to do so.

(i) Section 1956.66(b)(3) authorizes a discount for the cost of litigation and administration when the cost of collecting will not justify enforcing the collection of the entire debt.

(j) Sections 1956.70 (b)(2) and (b)(3) eliminate the requirement that disappeared debtors be absent for at least 5 years before the debt can be cancelled; and clarifies that, in cases of bankruptcy, the debt is not discharged if the debtor has reafirmed the debt prior to discharge.

(k) Sections 1956.75 (a)(2), (b) and (b)(1) provide a method to charge off judgments debts if 2 years have elapsed since any collections were made; eliminates the consideration of good faith for the charge off of nonjudgment debts; and authorizes debts of up to $600 to be charged off when the cost of collection will exceed recovery.

(l) Section 1956.98 provides for stamping as satisfied promissory notes that are settled by adjustment, compromise, or cancellation and for disposing of those notes.

(m) Section 1956.99 is revised to provide an exception authority whereby the FmHA Administrator may, in individual cases, make an exception to any provision when it is determined that application of the provision would adversely affect the Government's interest.

8. Propose to amend Subpart A of Part 1962 to reference the new Subpart B of Part 1956 of this chapter.

9. (a) Propose to amend Subpart A of Part 1965 to revise § 1965.24(a) to change the reference from FmHA Instruction 456.1 to FmHA Instruction 1956–B.

(b) Revise § 1965.26(f)(5) to remove the restriction that requires the Administrator's approval of release of liability when the borrower's remaining outstanding debt after a cash sale exceeds $25,000.

(c) Revise § 1965(f)(6) to change the reference from FmHA Instruction 456.1 to FmHA Instruction 1956–B.

(d) Revise § 1965.27(f) to allow release of liability when real estate indebtedness is assumed and repayment is scheduled for terms that exceed five (5) years and to remove the restriction that requires the Administrator's approval of release of liability when the remaining debt after a transfer and assumption exceeds $25,000.

List of Subjects

7 CFR Part 1864

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 1900

Appeals, Credit, Loan programs—Agriculture, Loan programs—Housing and Community development.

7 CFR Part 1903

Accounting, Loan programs—Agriculture and Rural areas.

7 CFR Part 1944

Home improvement, Low and moderate income housing—Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

7 CFR Part 1951

Account servicing, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Mortgages.

7 CFR Part 1955

Foreclosure, Government acquired property.

7 CFR Part 1956

Accounting, Loan program—Agriculture, Rural areas.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Foreclosure, Loan programs—Agriculture, Rural areas.

Accordingly, it is proposed that Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1864—DEBT SETTLEMENT

1. The authority citation for Part 1864 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

2. Section 1864.1 is revised to read as follows:

§ 1864.1 Purpose and scope.

This part sets forth the policies and procedures for settlement of debts owed the United States and administered by the Farmers Home Administration (FmHA) under any of its programs, except Farmers Programs loans, Housing loans, non-program (NP) loans, Economic Opportunity (EO) loans, and Claims Against Third Party Converters. This regulation does not cover releases from personal liability in transfer or voluntary conveyance cases. Debts owed under Farmer Programs or Single Family Housing programs will be settled in accordance with Subpart B of Part 1956 of this chapter. Settlement of claims against third party converters and settlement of non-program (NP) loans, Economic Opportunity (EO) loans, and housing loans other than single family housing is not authorized under this part and proposed settlements of these types of claims should be submitted to the National Office.

PART 1900—GENERAL

3. The authority citation for Part 1900 continues to read as follows:

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

Subpart B—Farmers Home Administration Appeal Procedure

4. Section 1900.51 is amended by revising paragraph (b) to read as follows:

§ 1900.51 General.

* * * * *

(b) Debt settlement action found in Part 1864 (FmHA Instruction 456.1) or Subpart B of Part 1956 of this chapter.

* * * * *

PART 1903—VOLUNTARY DEBT ADJUSTMENT

5. The authotity citation for Part 1903 continues to read as follows:

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

Subpart A—Voluntary Debt Adjustment

6. Section 1903.2 is amended by revising paragraph (b) to read as follows:

§ 1903.2 Policy.

* * * * *

(b) Debts owed to the FmHA will not be adjusted pursuant to this subpart but will be considered for settlement in accordance with Part 1864 (FmHA Instruction 456.1) or Subpart B of Part 1956 of this chapter or for release of personal liability in accordance with Subparts A or C of Part 1965 of this chapter.

PART 1944—HOUSING

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

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

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

8. Section 1944.4 is amended by revising paragraph (c) to read as follows:

§ 1944.4 Loan restrictions.

* * * * *

(c) A loan will not be made to an applicant whose previous FmHA debts have been settled pursuant to Part 1864 of this chapter (FmHA Instruction 456.1) or Subpart B of Part 1956 of this chapter or by release from personal liability under Subpart A of Part 1955 of this chapter as reflected by the County Office records, or where settlement under such regulation is contemplated, unless failure to pay the indebtedness was the result of circumstances beyond the applicant's control, or the conditions which necessitated the debt settlement or release, other than weather hazards, disasters, or price fluctuations, have been removed or will be removed by making the loan. Before approving the property or causing such an applicant to incur any expense in connection with the loan the County Supervisor will complete Form FmHA 431–2, "Farm and Home Plan," or Form FmHA 431–3, "Household Financial Statement and Budget," and send it with the application, any available case folders, and recommendations to the State Office for a determination as to whether to proceed with the development of the loan docket.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

9. The authority citation for Part 1951 continues to read as follows:

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

Subpart A—Account Servicing Policies

10. Section 1951.15 is amended by revising paragraph (e) to read as follows:

§ 1951.15 Return of paid-in-full or satisfied notes to borrower.

* * * * *

(e) Debt settlement case. See Subpart B of Part 1956 of this chapter for handling of notes in debt settlement cases.

* * * * *

Subpart B—Collections

11. Section 1951.51 is amended by revising paragraph (a) to read as follows:

§ 1951.51 Purpose.

(a) Checks, money orders, and similar items to be remitted as payments on accounts of the Farmers Home Administration (FmHA) should be made payable to the FmHA, except that offers in compromise of judgment accounts authorized in Part 1864 or Subpart B of Part 1956 of this chapter will be made payable to the Treasurer of the United States and transmitted to the State Director for referral to the appropriate United States Attorney through the representative of the Office of the General Counsel (OGC). All collection items in any form other than coin and currency will be accepted subject to collection, that is, subject to the items being paid. Any remittance items which currently are not payable, including postdated checks, will not be accepted for payment on indebtedness due FmHA. When such items are received, they will be returned immediately to the remitter.

* * * * *

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

12. Section 1951.315 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1951.315 Servicing a note-only loan.

* * * * *

(a) Sale of real property improved with not-only funds. When property improved with note-only funds is sold, the County Supervisor should attempt to

collect the balance owed on the loan. If collection cannot be made, the debt may be assumed by the purchaser of the property on the terms of the note. If collection or assumption cannot be effected, the debt should be settled under Subpart B of Part 1956 of this chapter, if possible, or reclassified to collection-only if the borrower has assets and a judgment is to be sought.

(b) Note-only in connection with secured loan(s). When a borrower owes both secured and RH note-only loans and the security property is transferred to a party who will assume the secured loan(s), the amount to be assumed will be the total of the secured and unsecured loans, not to exceed the market value of the security property. When all of the transferor's debt is not assumed, the balance will be collected, secured by a judgment if there are assets from which collection may be made, or settled under Subpart B of Part 1956 of this chapter.

(c) Deceased borrower. When a note-only borrower dies, the County Supervisor will determine whether there are assets in the borrower's estate from which a claim may be collected. If there are assets, a claim against the decedent's estate may be recommended under § 1962.49 of Subpart A of Part 1962 of this chapter. If not, the debt will be settled under Subpart B of Part 1956 of this chapter.

PART 1955—PROPERTY MANAGEMENT

13. The authority citation for Part 1955 continues to read as follows:

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

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

14. Section 1955.10 is amended by revising the introductory text of paragraph (f)(2) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * * *

(f) * * *

(2) Consolidated Farm and Rural Development Act (CONACT) loans to individuals. For CONACT loans to individuals as defined in § 1955.3 of this subpart where the FmHA indebtedness plus any prior liens exceeds the market value of the property, the County Committee must make the following certification if it is to recommend that the borrower and any cosigner be released from liability. The certification will be made on Form FmHA 440–2, "County Committee Certification or Recommendation," in the blank space following Item No. 10:

In our opinion *(Name of Borrower(s) and any cosigner)* does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the voluntary conveyance, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of his or her ability. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon conveyance of the property to the Government.

If the County Committee does not recommend release from liability, the borrower must be informed that the indebtedness cannot be satisfied but a credit can be given equal to the market value, and the borrower will determine if he/she wishes to make a new offer on that basis. If a new offer is made and accepted, the account will be handled as an unsatisfied account as outlined in § 1955.18(f) of this subpart. If the County Committee does recommend release from liability the official who accepts the voluntary conveyance may approve the release of liability.

* * * * *

15. Section 1955.15 is amended by revising paragraph (d)(5) to read as follows:

§ 1955.15 Foreclosure by the Government of loans secured by real estate.

* * * * *

(d) * * *

(5) *Appeals of foreclosure actions.* All appeals will be handled pursuant to Subpart B of Part 1900 of this chapter. Foreclosure actions will be held in abeyance while an appeal is pending. No case will be referred to OGC for processing of foreclosure until a borrower's appeal and appeal review have been concluded, or the time during which appeal or request for review may be made has elapsed. In Farmer Program cases, (except graduation cases under Subpart F of Part 1951 of the chapter), the borrower must have received Forms FmHA 1924–14, 1924–25, and 1924–26, and any appeal must have been concluded.

* * * * *

16. Section 1955.20 is amended by revising paragraph (b)(2) to read as follows:

§ 1955.20 Acquisition of chattel property.

* * * * *

(b) * * *

(2) *Acceptance of offer and release from liability.* Before accepting an offer to convey chattels to FmHA, the concurrence of the State Director must be obtained. When chattel security is voluntarily conveyed to the Government and the borrower or cosigner(s), if any, are to be released from liability, the servicing official will stamp the note(s) "Satisfied by Surrender of Security and Borrower Released from Liability." The servicing official is authorized to sign the release of liability statement. Form FmHA 1955–1 will be executed by the servicing offical showing acceptance by the Government, and the satisfied note(s) and a copy of the Form FmHA 1955–1 will be furnished to the borrower.

* * * * *

PART 1956—DEBT SETTLEMENT

17. Part 1956 is added to read as follows:

PART 1956—DEBT SETTLEMENT

Subpart A—[Reserved]

Subpart B—Debt Settlement; Farmer Programs and Single Family Housing

Sec.

1956.51 Purpose.
1956.52–1956.53 [Reserved]
1956.54 Definitions.
1956.55–1956.56 [Reserved]
1956.57 General provisions.
1956.58 Approval or rejection.
1956.59–1956.65 [Reserved]
1956.66 Compromise and adjustment of nonjudgment debts owed FmHA.
1956.67–1956.69 [Reserved]
1956.70 Cancellation.
1956.71–1956.74 [Reserved]
1956.75 Chargeoff.
1956.76–1956.84 [Reserved]
1956.85 Payments and receipts.
1956.86–1956.95 [Reserved]
1956.96 Delinquent adjustment agreements.
1956.97 [Reserved]
1956.98 Disposition of promissory notes.
1956.99 Exception authority.
1956.100 [Reserved]

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—[Reserved]

Subpart B—Debt Settlement; Farmer Programs and Single Family Housing

§ 1956.51 Purpose.

This subpart delegates authority and prescribes policies and procedures for settlement of debts owed the United States for Farmers Home Administration (FmHA) Farmer Program and Single Family Housing loans. Settlement of claims against third party converters and settlement of non-program (NP) loans, Economic Opportunity (EO)

loans, and housing loans other than single family housing is not authorized.

§§ 1956.52-1956.53 [Reserved]

§ 1956.54 Definitions.

(a) *Adjustment.* The reduction of a debt or claim conditioned upon completion of payment of the adjusted amount at a specific future time or times, with or without the payment of any consideration when the adjustment offer is approved. An adjustment is not a final settlement until all payments under the adjustment agreement(s) have been made.

(b) *Cancellation.* The final discharge of a debt without any payment on it.

(c) *Chargeoff.* The writing off of a debt and termination of collection activity without release of personal liability.

(d) *Compromise.* The satisfaction of a debt or claim by the acceptance of a lump-sum payment of less than the total amount owed on the debt or claim.

(e) *Debtor.* The borrower of funds under any of the FmHA programs. This includes co-signors, guarantors and persons or entities that initially obtained or assumed a loan.

(f) *Farmer program loans.* Farm Ownership (FO), Operating (OL), Soil and Water (SW), Economic Emergency (EE), Emergency (EM), Recreation (RL), and Special Livestock (SL) loans and/or Rural Housing loans for farm service buildings (RHF).

(g) *Principal amount of debt.* The outstanding balance of the amount loaned including principal and interest plus any outstanding advances, including interest, made by the Government on behalf of the borrower.

(h) *Servicing office.* The FmHA office that is responsible for the account.

(i) *Settlement.* The compromise, adjustment, cancellation, or chargeoff of a debt owed to FmHA. The term "settlement" is used for convenience in referring to compromise, adjustment, cancellation, or chargeoff actions, individually or collectively.

(j) *Single family housing loans.* Rural Housing (RH) loans made under section 502 or section 504 of the Housing Act of 1949.

(k) *United States Attorney.* An attorney for the United States Department of Justice.

§§ 1956.55-1956.56 [Reserved]

§ 1956.57 General provisions.

(a) *Application of policies.* All debtors are entitled to impartial treatment and uniform consideration under this subpart. Accordingly, FmHA personnel charged with any responsibility in connection with debt settlement will adhere strictly to the authorizations, requirements, and limitations in this subpart, and will not substitute individual feelings or sympathies in connection with any settlement.

(b) *Collection efforts.* When debtors are contacted in an effort to collect, the employee in charge of the account should obtain from them essential information concerning their financial condition. If it appears that a debtor will not be able to pay in full and the indebtedness is eligible for settlement under this subpart, action should be taken, if possible, to avoid unnecessary litigation to enforce collection. If the debt is eligible for settlement authorities of FmHA should be explained and the privileges thereof extended to the debtor. The information obtained from the debtor should be documented on Form FmHA 456.1, "Application for Settlement of Indebtedness."

(c) *Negotiating a settlement.* District Directors and County Supervisors cannot approve debt settlement actions; therefore, they will make no statements to a debtor concerning the action that may be taken upon a debtor's application. In negotiating a settlement, all of the factors which are pertinent to determining ability to pay will be discussed to assist the debtor in arriving at the proper type and terms of a settlement. The present and future repayment ability of a debtor, the factors mentioned in this subpart, and any other pertinent information will be the basis of determining whether the debt would be collected in full, compromised, adjusted, cancelled, or charged off. It is impossible in cases eligible for debt settlement to forecast accurately the debtor's future repayment ability over a long period of time; consequently, the period of time during which payments on settlement offers are to be made should not exceed five years. Debtors have the right to make voluntary settlement offers in any amount should they elect to do so. Settlement offers will not be approved in any case unless there is resonable assurance that the debtor will be able to make the payments as they become due.

(d) *Disposition of property.* Ordinarily, except for paragraph (i) of this section or § 1956.66(a), all security will have been disposed of before processing a debt settlement action. Security can be retained only under the conditions specified in § 1956.66(a) of this subpart.

(e) *Proceeds from the sale of security.* Prior to considering any debt settlement action, proceeds from the sale of security must first be applied on the debtor's account, irrespective of an application for debt settlement unless the conditions specified in § 1956.66(a) are met. When a debtor has sold the security and wishes to use the proceeds as part or all of the offer, the employee in charge of the account will explain that such funds must be credited on the debt and cannot be used as a part of the settlement offer. After such funds are received for credit to the debtor's account, the debtor then may apply for settlement of the remaining indebtedness.

(f) *County Committee review.* The County Committee will not review proposed settlement action for Single Family Housing loans. Except for the cancellation of those debts discharged in bankruptcy where there is no remaining security, proposed settlement actions for Farmer Program loans will be reviewed for approval or rejection by the County Committee, and no settlement shall be approved if it is more favorable to the debtor than recommended by the appropriate County Committee.

(g) *Settlement when legal or investigative action has been taken, recommended, or is contemplated.*

(1) Debts cannot be settled:

(i) If the matter has been referred either to the Office of Inspector General (OIG) under § 1962.49(a) of Part 1962, Subpart A of this chapter or to OGC because of suspected criminal violation, or criminal prosecution is pending because of an illegal act(s) committed by the debtor in connection with the debt or the security for that debt, unless, if sent to OIG, the OIG has declined to investigate the matter or, if sent to OGC, OGC is consulted first, or, if in the hands of the United States Attorney, the procedure outlined in paragraph (g)(3) of this section is followed.

(ii) If a request for referral to the United States Attorney to institute a civil action to protect the interest of the Government has been made by FmHA.

(iii) Except as provided in paragraph (g)(3) of this section, if the case has been referred to the United States Attorney and is not closed.

(2) If a debtor's account is involved in a fiscal irregularity investigation in which final action has not been taken or the account shows evidence that a shortage may exist and an investigation will be requested, the account will not be approved for settlement.

(3) When a claim has been referred to, or a judgment has been obtained by, the United States Attorney, and the debtor requests settlement, the employee in charge of the account will explain to the debtor that the United States Attorney has exclusive jurisdiction over the claim or judgment, that FmHA hs no authority to agree to a settlement offer when the

United States Attorney's file is not closed, and that if the debtor wishes to make a compromise or adjustment offer when the United States Attorney's file is not closed, it will be submitted with any related payment directly to the United States Attorney for a decision on the settlement offer.

(h) *Advice from the OGC.* State Directors will obtain, when necessary, advice from the OGC in handling proposed debt settlement actions which involve legal problems.

(i) *Settlement of claims against estates.* Settlement of a claim against an estate under the provisions of this subpart will be based on the recovery that may reasonably be expected, taking into consideration such items as the security, costs of administration, allowances of minor children and surviving spouse, allowable funeral expenses, and dower and curtesy rights, and specific encumbrances on the property having priority over claims of the Government.

(j) *Joint debtors.* Settlements may not be approved for one joint debtor unless approved for all debtors. "Joint debtors" includes all parties (individuals, partnerships, joint operators, coopertives, corporations, estates) who are legally liable for payment of the debt.

(1) Separate and individual adjustment offers from joint debtors must be accepted and processed only as a joint offer. Joint debtors must be advised that all debtors will remain liable for the balance of the debt until all payments due under the joint offer have been made.

(2) A separate Form FmHA 456–1 will be completed by each debtor, unless the debtors are members of the same family and all necessary financial information on each debtor can be shown clearly on a single application. Separate applications will be sent to the State Office as a unit.

(3) If one debtor applies for compromise, adjustment, or cancellation, or if the debt is to be charged off, and the other debtor(s) is deceased or his received a discharge of the debt in bankruptcy, or the whereabouts of the other debtor(s) is unknown, or it is impossible or impracticable or obtain the signature of the other debtor(s), Form FmHA 456–1 will be prepared by showing at the top of the form the name of the debtor requesting settlement, followed by the name of the other debtor. For example, "John Doe, joint debtor with Bill Doe, deceased," "John Doe, joint debtor with Sam Doe, discharged in bankruptcy," "John Doe, joint debtor with Mary Doe, impossible or impracticable to obtain signature," as appropriate. In addition to the information concerning settlement of the debt by the applicant, information which justifies settlement of the debt as to the debtor(s) not joining in the application will be shown on Form FmHA 456–1.

(k) *Adjustment of debts when debtors are in bankruptcy.* FmHA personnel do not have the authority to accept or reject a reorganization plan on behalf of the United States for debtors filing under Chapter 11 or Chapter 13 when the plan calls for part of the FmHA debt to be forgiven.

(1) Plans submitted by debtors under Chapters 11 and 13 must be sent by the County Supervisor to the State Director who will refer them to the United States Attorney through the Regional Attorney. When the plan calls for the adjustment of a debt to FmHA, the State Director will provide the Regional Attorney with a recommendation on acceptance or rejection of the plan.

(2) The U.S. Attorney will advise the FmHA State Director through the Regional Attorney as to approval or rejection of the debtor's reorganization plan. Upon notification of an approval, the State Director will notify the Finance Office by memorandum of the terms and conditions of the bankruptcy reorganization plan including any adjustment of the debtor's debt. This will also be done in "cramdowns" imposed by the courts.

§ 1956.58 Approval or rejection.

(a) *Approval authority.* Subject to this subpart, the compromise, adjustment, cancellation, or chargeoff of debts will be approved or rejected:

(1) By the State Director when the indebtedness involved in the settlement is less than $150,000 (including principal, interest, and other charges).

(2) By the Administrator when the indebtedness involved in the settlement is $150,000 or more (including principal, interest, and other charges) (See Exhibit A, available in any FmHA office).

(b) *Approval processing.* The state Director will:

(1) Execute and send the original approved Form FmHA 456–1 to the Finance Office.

(2) Notify debtors in writing of approval of the settlement of their indebtedness in the following cases:

(i) All compromise and adjustment offers. The following will also be done:

(A) The specific amount and terms of the offer will be stated.

(B) The accounts settled will be identified by reference to the accounts shown on Form FmHA 456–1.

(ii) Cancellations under § 1956.70(a) or § 1956.70(c) of this subpart.

(3) Not be required to notify debtors of approval of the settlement of their indebtedness when debts are charged off under § 1956.75 or cancelled under § 1956.70(b).

(c) *Requesting additional information.* When rejection appears to be necessary either because of lack of information or because the amount of a compromise or adjustment offer is inadequate, the State Director may request the employee in charge of the account to obtain the additional information or make an effort to obtain an acceptable offer, as the circumstances justify. Notice of rejection of an offer will be withheld in such cases until sufficient time has elapsed to enable the debtor to present further information or a new offer. All settlement offers will be handled promptly.

(d) *Rejection processing.* The State Director will:

(1) Insert the reasons for rejection on the Form FmHA 456–1.

(2) Execute and retain the original Form FmHA 456–1 in the State Office.

(3) Return case files and copies of Form FmHA 456–1 to the employee in charge of the account.

(4) Request the Finance Office to return any adjustment or compromise payment held by the Finance Office to the borrower, in care of the employee in charge of the account.

(5) Return any adjustment or compromise payment held by the State Office to the borrower, in case of the employee in charge of the account.

(6) Notify the debtor in writing of the reasons for the rejection in the following cases:

(i) All compromise and adjustment offers.

(ii) Cancellations under § 1956.70(a) of this subpart.

(e) *Appeal rights.* There is no right to appeal the rejection of any debt settlement under this subpart.

§§ 1956.59–1956.65 [Reserved]

§ 1956.66 Compromise and adjustment of nonjudgment debts owed FmHA.

Nonjudgment debts owed FmHA may be compromised or adjusted upon application of the debtor(s), or if the debtor is unable to act, upon application of the guardian, executor, or administrator on Form FmHA 456–1. The debt or any extension thereof on which compromise or adjustment is requested must be due and payable under the terms of the note or other instrument, or because of acceleration by written notice prior to the date of application. Efforts will be made to avoid applications for settlement in which debtors offer a specified amount payable upon notice of approval of the proposed settlement.

(a) *Debts which the debtor is unable to pay in full.* Debts may be

compromised or adjusted provided the debtor is unable to pay the indebtedness in full and has offered an amount equal to the present fair market value of all security for the debt, including any crop security, and any additional amount which the debtor is able to pay. The amount offered must represent a reasonable determination of the debtor's ability to pay. The amount must also bear a reasonable relation to the amount which can be recovered by enforced collection procedures. In such cases the debtor may retain possession of the security. The debtor's income and expenses and nonsecurity assets are critical factors in determining eligibility for any settlement, the type of settlement, and the amount which the debtor can resonably be expected to offer. In evaluating the debtor's ability to pay, it is essential that reliable information be obtained in sufficient detail to assure that the items are complete and accurate concerning the following:

(1) The amount offered equal to the present fair market value of the existing security for the debt will be determined as follows:

(i) A current market value appraisal will be completed by an FmHA employee authorized to make appraisals of the type(s) of property to be retained and the appraisal placed in the debtor's file.

(ii) Statements of indebtedness owed will be obtained from any existing prior lienholder(s) whose lien(s) remain(s), and placed in the debtor's file.

(iii) Value of existing security will be market value determined by paragraph (a)(1)(i) of this section less lien(s) to remain in paragraph (a)(1)(ii) of this section.

(2) In determining any additional amount which the debtor is able to pay, the debtor's total present income will be determined. Careful consideration will be given to the probable sources, amount, and stability of income to be received over a reasonable period of years. Old age pensions, other public welfare assistance, and pensions received by veterans for pensionable disabilities, will not be considered as sources of funds with which to make compromise and adjustment offers.

(3) The amount of the debtor's farm or business operating and living expenses necessary to continue the operation will be determined.

(4) The amount of the debtor's debts and the priority of payments on debts from income will be determined.

(5) When the debtor is largely dependent on income from an occupation in which manual labor is required, age and health are vital factors in determining the ability to pay. However, when the debtor's income is from investments, business enterprises, or management efforts, age and health are of less importance. The number in the debtor's family, and their ages and condition of their health, also will weigh heavily in determining the ability to pay.

(6) The value of the debtor's assets in relation to debts and liens of third parties is important in determining the debtor's ability to pay. It is recognized that debtors must retain a reasonable equity in essential nonsecurity property in order to continue normal operations and meet family living expenses over a period of years. Under this policy a reasonable equity in a modest nonsecurity homestead occupied by the debtor, whether or not exempt from levy and execution will not be considered as available for offer in settlement. Nonsecurity property which is in excess of minimum family living needs and which is not exempt from levy and execution should be considered when determining the debtor's ability to pay.

(b) *Debts which the debtor is able to pay in full but refuses to do so.* Debts which the debtor may have the ability to pay in full but has refused to do so may be compromised or adjusted in the following situations on Form FmHA 456–1:

(1) When the full amount cannot be collected because of the refusal of the debtor to pay the debt in full and the OGC advises that the Government is unable to enforce collection in full within a reasonable time by enforced collection proceedings, the debt may be compromised. In determining inability to collect, the following factors will be considered:

(i) Availability of assets or income which may be realized by enforced collection proceedings, considering the applicable exemptions available to the debtor under State and Federal law.

(ii) Inheritance prospects within 5 years.

(iii) Likelihood of debtor obtaining nonexempt property or income within 5 years, out of which there could be collected a substantially larger sum than the amount of the present offer.

(iv) Uncertainty as to price the security or other property will bring at forced sale.

(2) The debt may be compromised or adjusted when the OGC has advised in writing that:

(i) There is a real doubt concerning the Government's ability to prove its case in court for the full amount of the debt, and

(ii) The amount offered represents a reasonable settlement considering:

(A) The probability of prevailing on the legal issues involved.

(B) The probability of proving facts to establish full or partial recovery, with due regard to the availability of witnesses and other pertinent factors.

(C) The probable amount of court costs and attorney's fees which may be assessed against the Government if it is unsucessful in litigation.

(3) When the cost of collecting the debt does not justify enforced collection of the full amount, the amount accepted in compromise or adjustment may reflect an appropriate discount for administrative and litigious costs of collection. Such discount will not exceed $600 unless the OGC advises that in the particular case a larger discount is appropriate. The cost of collecting may be a substantial factor in settling small debts but normally will not carry great weight in settling large debts.

(c) *Compromise or adjustment without doctor's signature.* Debts of a living debtor may be compromised or adjusted if it is impossible or impracticable to obtain a signed application and all other requirements of this section applicable to compromise or adjustment with a signed application have been met. Form FmHA 456–1 will show:

(1) The sources from which the information was obtained.

(2) That a current effort was made to obtain the debtor's signature and the date(s) of such effort.

(3) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor, and if the debtor refused to sign, the reason(s) given.

§§ 1956.67–1956.69 [Reserved]

§ 1956.70 Cancellation.

Nonjudgment debts may be cancelled in the following instances:

(a) *With application.* Debts due the FmHA may be cancelled upon application of the debtor, or if a debtor to act, upon application of a guardian, executor, or administrator, subject to the following conditions:

(1) The FmHA employee in charge of the account furnishes a report and favorable recommendation concerning the cancellation.

(2) There is no known security for the debt and the debtor has no other assets from which the debt could be collected.

(3) The debtor is unable to pay any part of the debt and has no reasonable prospect of being able to do so.

(4) The debt or any extension thereof is due and payable under the terms of the note or other instrument, or because

of written notice prior to the date of application.

(b) *Without application.* Debt due the FmHA may be cancelled upon a report and the favorable recommendation of the employee in charge of the account in the following instances:

(1) *Deceased debtors:* The following conditions must exist:

(i) There is no known security; and

(ii) An administrator or executor has not been appointed to settle the debtor's estate and the financial condition of the estate had been investigated and it has been established that there is no reasonable prospect of recovery; or

(iii) An administrator or executor has been appointed to settle the estate of the debtor; and

(A) A final settlement has been made and confirmed by the probate court and the Government's claim was recognized properly and the Government has received all funds it was entitled to, or

(B) A final settlement has not been made and confirmed by the probate court but there are no assets in the estate from which there is any reasonable prospect of recovery, or

(C) Regardless of whether a final settlement has been made, there were assets in the estate from which recovery might have been effected but such assets have been disposed of or lost in a manner which the OGC advises will preclude any reasonable prospect of recovery by the Government.

(2) *Disappeared debtors.* The debt may be cancelled without application where the debtor has no known assets or future debt-paying ability, has disappeared and cannot be found without undue expense, and there is no existing security for the debt. Reasonable efforts will be made to locate the debtor. These efforts will generally include contracts, either in person or in writing, with postmasters, motor vehicle licensing and title authorities, telephone directories, city directories, utility companies, State and local governmental agencies, other Federal agencies, employees, friends, and credit agency skip locate reports, known relatives, neighbors and County Committee members. Also, the debtor's loan file should be reviewed carefully for possible leads that may be of assistance in locating the debtor. The efforts made to locate the debtor, including the names and dates of contacts, and the information furnished by each person, will be fully documented in the appropriate space on Form FmHA 456–1.

(3) *Debtors discharged in bankruptcy.* If there is no security for the debt, debts discharged in bankruptcy shall be cancelled by the use of Form FmHA 456–1 with a copy of the Bankruptcy Court's Discharge Order attached. No attempt will be made to obtain the debtor's signature and County Committee review is unnecessary. If the debtor has executed a new promise to pay prior to discharge and has otherwise accomplished a valid reaffirmation of the debt in accordance with advice from OGC, the debt is not discharged.

(c) *Signature of debtor cannot be obtained.* Debts of a living debtor may be cancelled if it is impossible or impracticable to obtain a signed application and the requirements in subsection (a) of this section concerning cancellation with application have been met or if the debt has been discharged in bankruptcy and there is no security. Form FmHA 456–1 will state:

(1) The sources of information obtained.

(2) That a current effort was made to obtain the debtor's application and the date of such effort.

(3) The specific reasons why it was impossible or impracticable to obtain the signature of the debtor and, if the debtor refused to sign, the reason(s) given.

§ 1956.71–1956.74 [Reserved]

§ 1956.75 Chargeoff.

(a) *Judgment debts.* Subject to the provisions of § 1956.57(g)(3), judgment debts may be charged off by use of Form FmHA 456–1 upon a report and favorable recommendation of the employee in charge of the account provided:

(1) The United States Attorney's file is closed, and

(2) The requirement of § 1956.70(b)(2) have been met, *or* two years have elapsed since any collections were made on the judgment and the debtor(s) has no equity in property on which the judgment is a lien or on which it can presently be made a lien.

(b) *Nonjudgment debts.* Debts which cannot be settled under other sections of this subpart may be charged off with the debtors signature subject to the following provisions:

(1) When the principal balance is $600 or less and efforts to collect have been unsuccessful or it is apparent that further collection efforts would be ineffectual or uneconomical,

(2) When the OGC advises in writing that the claim is legally without merit,

(3) Even though FmHA considers the claim to be valid, when efforts to induce voluntary payments are unsuccessful and the OGC advises in writing that evidence necessary to prove the claim in court cannot be produced, or

(4) When the employee in charge of the account recommends the chargeoff and has made the following determinations on the basis of information in FmHA's official files or from other informed reliable soures:

(i) That the debtor is:

(A) Unable to pay any part of the debt and has no apparent future debt repayment ability as specified in § 1956.16(a); or

(B) Able to pay part of all of the debt but is unwilling to do so, it is clear that the Government cannot enforce collection of a significant amount from assets or income, and an opinion is received from OGC to that effect; and

(ii) There is no security for the debt.

§ 1956.76–1956.84 [Reserved]

§ 1956.85 Payments and receipts.

(a) *Servicing office handling.*

(1) An application with which the debtor offers a lump-sum payment in compromise, or with which the debtor offers an initial payment on an adjustment offer, will be accompanied by the payments required at the time such application is filed in the servicing office.

(2) Except as provided in paragraph (a)(3) of this section, payments offered by debtors in settlement of debts will be deposited and transmitted as required in Subpart B of Part 1951 of this chapter.

(3) Checks or check transmittal letter containing restrictive notations such as "Settlement in full" or "Payment in full," or in those exceptional instances when the debtor refuses to sign the Form FmHA 456–1 in connection with a compromise offer, will be forwarded to the State Office where they will be retained until approval or rejection of the offer. The use of restrictive notations will be discouraged to the fullest extent possible.

(b) *Finance Office handling.*

(1) All payments evidenced by Form FmHA 451–2, "Schedule of Remittances," bearing the legend "Compromise Offer—FmHA" or "Adjustment Offer—FmHA," will be held in the Deposits Fund Account by the Finance Office until notification is received from the State Office of the approval or rejection of the offer. In cases of approved offers, remittances will be applied in accordance with established policies, beginning with the oldest loan included in the settlement, except that when the request for settlement includes loans made from different revolving funds the Finance Office will prorate the amount received, on the basis of the total principal balance due the respective revolving

funds. Upon notification of a rejection of a debtor's offer and receipt of a request from the State Director for a refund, the Finance Office will refund to the debtor, in care of the employee in charge of the account, the amount held in the Deposits Fund Account representing a rejected compromise or adjustment offer.

(2) When a debtor's adjustment offer is approved, the accounts involved will not be adjusted in the records of the Finance Office until all payments have been made. Form FmHA 456–1 will be held in a suspense file pending payment of the full amount of the approved offer. The original Form FmHA 456–1 in approved cases will be retained in the Finance Office.

§§ 1956.86–1956.95 [Reserved]

§ 1956.96 Delinquent adjustment agreements.

(a) *Servicing office handling.* The employee in charge of the account should notify debtors in advance of the due dates of payments on debt settlement agreements. The employee in charge of the account should promptly contact debtors who are delinquent on debt settlement payments and find out their reasons for not making payments when due, and their plans for completing their agreements. Delinquencies of 30 days or more will be reported to the State Director along with other pertinent information and the recommendation of the employee in charge of the account regarding the further handling of the case.

(b) *State Office handling.* (1) In those instances in which the debtor is delinquent under the terms of the debt settlement agreement and is likely to be financially unable to meet the terms of the debt settlement agreement, consideration should be given by the State Director to voiding the existing agreement and processing a different type of settlement more consistent with the debtor's repayment ability, provided the facts in the case justify such action.

(2) The State Director may extend, for ninety days, the time for making the payments when the circumstances of the case justify an extension. Extensions for a greater period of time may be made by the State Director upon the recommendation of the County Committee (for Farmer Program loans) and the employee in charge of the account. A decision not to extend the time for making payments is not appealable.

(3) When an adjustment agreement is voided, the State Director will notify the debtor giving the reasons in writing, with a copy to the Finance Office and to the employee in charge of the account. Upon receipt, the Finance Office will return the original Form FmHA 456–1 to the State Office. Te voiding of an adjustment offer is not appealable.

(c) *Disposition of payments.* If an agreement is voided, any payments received shall be retained as payments on the debt owed at the time of the compromise or adjustment offer.

§ 1956.97 [Reserved]

§ 1956.98 Disposition of promissory notes.

(a) Notes evidencing debts settled by completed adjustments, compromised with or without signature, or cancelled with signature will be returned to the debtor or to the debtor's legal representative. The original and copies of the notes will be stamped "Satisfied by Approved Compromise" or "Satisfied by Approved Cancellation." In such cases, the security instrument(s) will be released of record in the usual manner.

(b) Notes evidencing debts cancelled without application will be placed in the debtor's case folder and disposed of pursuant to FmHA Instruction 2033–A (available in any FmHA office). However, if the debtor requests the notes, they may be stamped "Satisfied by Approved Cancellation" and returned.

(c) Notes evidencing charged off debts will be retained in the servicing office and will not be stamped or returned to the debtor. They will be destroyed six years after charged off pursuant to § 2033.14 of FmHA Instruction 2033–A (available in any FmHA office).

§ 1956.99 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted. Any settlement actions approved by the Administrator under this section will be documented on Form FmHA 456–1 and returned to the State Office for submission to the Finance Office.

§ 1956.100 [Reserved]

PART 1962—PERSONAL PROPERTY

18. The authority citation for Part 1962 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

19. Section 1962.46 is amended by revising the introductory text and paragraph (c)(3) to read as follows:

§ 1962.46 Deceased borrowers.

Immediately on learning of the death of any person liable to FmHA, the County Supervisor will prepare Form FmHA 455–17, "Report on Deceased Borrower," to determine whether any special servicing action is necessary unless the County Supervisor recommends settlement of the indebtedness under Subpart B of Part 1956 of this chapter. If a survivor will not continue with the loan, it may be necessary to make immediate arrangements with a survivor, executor, administrator, or other interested parties to complete the year's operations or to otherwise protect or preserve the security.

* * * * *

(c) * * *

(3) The debt owed to FmHA by the estate is settled under Subpart B of Part 1956 of this chapter, well ahead of the deadline for filing proof of claim.

* * * * *

20. Section 1962.49 is amended by revising paragraph (e)(4) to read as follows:

§ 1962.49 Civil and criminal cases.

* * * * *

(e) * * *

(4) In all judgment cases, any proposed compromise or adjustment will be handled in accordance with Subpart B of Part 1956 of this chapter.

* * * * *

PART 1965—REAL PROPERTY

21. The authority citation for Part 1965 continues to read as follows:

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

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

22. Section 1965.24 is amended by revising paragraph (a) to read as follows:

§ 1965.24 Servicing note-only cases.

* * * * *

(a) Sale of real property on which improvements were made with note-only FmHA funds. Any loan evidenced only by an unsecured note will be collected by voluntary means at the time of the sale of the property, if possible. If collection is not possible, the loan may be assumed by the purchaser of the property on the terms of the note if the assumption is determined to be in the FmHA's best financial interest. If collection or assumption cannot be effected, consideration should be given to settling the account in accordance with Subpart B of Part 1956 of this chapter, if it is eligible, obtaining judgment, or classifying it as collection-only. In case of a judgment sale, the State Director with the advice of OGC and the U.S. Attorney, will authorize an employee to attend the sale and if appropriate, enter a bid on behalf of the Government under Subpart A of Part 1955 of this chapter.

* * * * *

23. Section 1965.26 is amended by revising paragraphs (f)(5) and (f)(6) to read as follows:

§ 1965.26 Liquidation action.

* * * * *

(f) * * *

(5) When the debt is not paid in full and a deficiency judgment is not to be obtained, a release of liability of the borrower can be processed, if the County Committee has recommended release of liability with the following comment on the County Committee Certification:

In our opinion (*Name of Borrower(s) and any co-signer*) does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of his or her ability. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon completion of the transaction.

(6) If a release from liability cannot be granted, the borrower will be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter (available in any FmHA office). The case will be settled under the provisions of Subpart B of Part 1956 of this chapter.

24. Section 1965.27 is amended by revising the introductory text of paragraph (f) to read as follows:

§ 1965.27 Transfer of real estate security.

* * * * *

(f) Release of transferor from liability. The borrower (and any cosigner for an SFH loan) may be released from personal liability when all of the real estate security is transferred under paragraph (c) or (d) of this section and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed. When the total outstanding debt is not assumed and a Farmer Program borrower is not being released from liability, the borrower must be sent a letter similar to Exhibit F of Subpart A of Part 1955 of this chapter (available in any FmHA office). When a portion of the real estate is transferred and the total SFH debt is assumed, a release may be granted under paragraph (b)(7) of this section provided that the transferee is an eligible SFH applicant. When only that portion of the debt equal to the market value of the security is assumed and the borrower is to be released from liability, the transferee must be an eligible SFH applicant in order for the transferor to be released from the liability on the RH debt and the conditions in paragraphs (f)(1) and (f)(2) must be met. If the transferee of the SFH debt is not an eligible RH applicant, any proposed release of the transferor from liability must be submitted to the National Office.

* * * * *

Dated: May 28, 1986.

Kathleen W. Lawrence,

Acting Under Secretary for Small Community and Rural Development.

[FR Doc. 86-14961 Filed 7-2-86; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: In order to improve the licensing process for nuclear power plants, the Nuclear Regulatory Commission is considering amending certain provisions of its rules of practice which address the following aspects of the hearing process: admission of contentions; discovery against NRC staff; use of cross-examination plans; timing of motions for summary disposition; and limitations on intervenors' filings of proposed findings of fact, conclusions of law, and appellate briefs. In addition to these proposals, which were initially developed by the Regulatory Reform Task Force, the Commission is also seeking comments on a series of related proposals developed by Commissioner Asselstine concerning the process of intervention.

DATES: Comments must be received on or before September 2, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Interested persons are invited to send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments may also be delivered to Room 1121, 1717 H Street NW., Washington, DC between 8:15 a.m. and 5:00 p.m. Copies of any comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Linda S. Gilbert, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-7678; or Trip Rothschild, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (202) 634-1465.

SUPPLEMENTARY INFORMATION:

I. Regulatory Reform Task Force Proposals

Background

In November, 1981, the NRC created a Regulatory Reform Task Force (RRTF) charged with conducting a detailed evaluation of the NRC licensing process for nuclear power plants. The Commission directed the Task Force to develop proposals both for legislation and for rule changes to improve the process by which nuclear power plants are licensed.

The Task Force reviewed a large number of proposals for reforming the licensing process through rule changes, and in November 1982 forwarded a

Draft Report [1] to the Commission containing a number of these proposals. Inclusion of a proposal in the Draft Report indicated that a consensus of the Task Force members believed that further evaluation of the proposal was appropriate. It did not indicate that the proposal necessarily commanded the support of a majority of Task Force members—members frequently held strongly differing views on the merits of individual proposals.

The Draft Report was reviewed internally by a Senior Advisory Group, composed of NRC personnel, and by an Ad Hoc Committee for the Review of Nuclear Reactor Licensing Reform Proposals. The latter group, established by the Commission, was composed of non-NRC persons with experience in the Commission's licensing process and procedures. Members of each group held divergent views on the merits of particular proposals, and so advised the Commission.

On November 17, 1983, the Commission discussed the administrative proposals for the hearing process at a public meeting. Based on all the information before it, the Commission decided to solicit public comment on the entire package of administrative proposals before deciding on a particular course of action with respect to any or all of the individual proposals. On April 12, 1984, the Commission published a notice in the **Federal Register**, 49 FR 14698–14715, April 12, 1984, inviting the public to submit comments by June 11, 1984 on the proposals.

The Commission received twenty-nine letters of comment in response to the **Federal Register** notice of April 12, 1984. The commenters included nine nuclear utilities or their counsel, nine intervenors or their counsel, four states, three individuals, an architect engineering firm, a nuclear manufacturer, an industry group, and an energy newsletter. Copies of all comments received have been placed in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, 20555, where they are available for inspection and for copying for a fee.

At public meetings held December 18, 1984 and January 9, 1985, the Commission considered the suggested proposals to change the licensing process, as set out in the April 12, 1984 notice, in the light of the comments received. In addition, the Commission also considered the separate licensing reform proposals of Commissioner Asselstine which are discussed in greater detail *infra*. On the basis of these comments and taking into account the extensive study and analysis accorded the proposals by the Regulatory Reform Task Force, the Senior Advisory Group, and the Ad Hoc Committee, the Commission identified five proposals which merit continued consideration for possible inclusion in Subpart G of the Commission's Rules of Practice. These proposals, which would affect §§ 2.714, 2.720, 2.743, 2.749, 2.754 and 2.762 of those rules, relate to the admission of contentions; discovery against NRC staff; use of cross-examination plans; timing of motions for summary disposition; and limitations on matters and issues which may be included in intervenors' proposed findings of fact, conclusions of law, or appellate briefs. Each of the proposed changes is described more fully in the following section-by-section analysis.

Section-by-Section Analysis of RRTF Proposals

Intervention (10 CFR 2.714) Admission of Contentions—Item 2) [2]

The proposed amendments to § 2.714 would raise the threshold for the admission of contentions essentially to require the proponent of the contention to supply information showing the existence of a genuine dispute with the applicant or the NRC staff on an issue of fact. The showing must include references to the specific portions of the application which are disputed. The contention must be supported by a concise statement of the alleged facts or expert opinion, together with specific sources and documents of which the petitioner is aware, which will be relied on to establish the facts or expert opinion. The purpose of the increased threshold, which is consistent with Supreme Court precedent,[3] is to sharpen the issues in dispute throughout the prehearing and hearing phases and to ensure that the resources of all parties are focused on real rather than imaginary issues.

A new provision has been added, proposed § 2.714(d)(2)(iv), which would provide that a contention raising only an issue of law will not be admitted for resolution in an evidentiary hearing but shall be decided on the basis of briefs and/or oral argument.

Section 189a. of the Atomic Energy Act of 1954, as amended, provides that for specified types of proceedings "the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding." The Commission's regulations implementing this provision require that, once a petitioner is admitted to the proceeding, he or she must supplement the petition with a list of contentions and a statement of the basis for each contention with reasonable specificity. *See* 10 CFR 2.714(b). In order to be permitted to participate as a party, an intervenor must advance at least one contention that satisfies these requirements. The list of contentions is intended to inform the parties and the presiding officer of the issues which the intervenor seeks to litigate. In practice, this requirement may be met by copying contentions from another proceeding involving another reactor. Thus, an intervenor may not fully understand a contention and frivolous contentions may be admitted. In addition, the contentions may not adequately identify the issues that the intervenor seeks to litigate.

Under current practice, the presiding officer makes no inquiry into the merits of a contention in ruling on its admissibility. An intervenor is under no obligation to demonstrate the existence of some factual support for the contention as a precondition to its acceptance. In addition, an intervenor need not show that a genuine dispute of fact exists with the applicant or the NRC staff. These obligations do not arise until later in the proceeding, either in opposition to a motion for summary disposition or at the evidentiary hearing. By increasing the threshold for the admission of contentions, the proposed amendments would sharpen the issues in dispute throughout the proceeding and ensure that the resources of all parties are not spent on litigating frivolous contentions.

Under the proposed rule, a contention will be admitted only if the petitioner can establish that a genuine dispute exists on a material issue of law, fact, or policy between petitioner and the applicant (or the NRC staff on environmental issues). In deciding whether a genuine dispute exists, the presiding officer shall determine whether the information presented is sufficient to prompt reasonable minds to inquire further with regard to the validity of the contention. This is the standard articulated in *Costle* v. *Pacific*

[1] The Draft Report contained proposed rule changes concerning backfitting, the hearing process, separation of functions/*ex parte* communications, and participating of the NRC staff in initial license proceedings. It also included legislative proposals.

[2] In each case, the item number refers to the number of the amendment in the text of the proposed rule.

[3] *See Costle*, v. *Pacific Legal Foundation*, 445 U.S. 198, 214 (1980) (citing *Weinberger* v. *Hynson, Westcott and Dunning, Inc.* 412 U.S. 609, 620–621 (1973)).

Legal Foundation, 445 U.S. 198 (1980) and other federal court decisions. *See, e.g., Vermont Yankee Nuclear Power Corp.* v. *NRC*, 435 U.S. 519 (1978); *Connecticut Bankers Ass'n* v. *Board of Governors*, 627 F.2d 245 (D.C. Cir. 1980); *Independent Bankers Ass'n* v. *Board of Governors*, 516 F.2d 1206 (D.C. Cir. 1975).

Subpoenas (10 CFR 2.720) (Discovery Against NRC Staff—Item 3)

Under the procedures in § 2.720(h)(2)(ii), parties may submit interrogatories to NRC personnel to elicit factual information reasonably related to the NRC staff's position at the hearing. The staff is not required to answer those interrogatories, however, unless the presiding office finds that the answers are necessary to a proper decision in the proceeding and that they are not reasonably obtainable from any other source. In many instances the NRC staff, voluntarily and as a matter of discretion, provides written answers to interrogatories without insisting that the party requesting the information comply with the procedures specified in this section. This can save time, particularly if the interrogatories are such that the staff would probably be required by the presiding officer to answer them. In other instances, however, the staff has objected to interrogatories on various grounds and the presiding officer has not required the staff to respond. Although the staff may ultimately prevail in such instances, staff resources must be expended in preparing and defending objections to the request. The proposed rule would conserve staff resources by codifying two existing grounds for objection to interrogatories directed to the staff. This would enable the staff simply to cite the provisions of the rule in objecting to the request.

Under existing NRC practice, it is an adequate response to state that the information requested is available in NRC public document rooms or in public compilations and to provide sufficient information to enable a party to locate the material requested. *See, e.g., Metropolitan Edison Co.* (Three Mile Island Nuclear Station, Unit No. 1), CLI-79-8, 10 NRC 141, 147-48 (1979). Such information is "reasonably available from any other source" within the meaning of 10 CFR 2.720(h)(2)(ii) and, therefore, need not be provided. A sufficient answer to such a question would be the title, page reference, and location of the relevant document.

In addition, NRC case law recognizes that "[i]n responding to discovery requests, a party is not required to engage in extensive independent research. It need only reveal information in its possession or control (although it may be required to perform some investigation to determine what information it actually possesses)." *Pennsylvania Power and Light Co.* (Susquehanna Steam Electric Station, Units 1 and 2), ALAB-613, 12 NRC 317, 334 (1980). *See also* Fed. R. Civ. P. 33 (c). The proposed rule would codify this limitation with respect to interrogatories directed to the staff. It would make clear that such interrogatories may not require the staff either to perform additional research or analytical work beyond that needed to support the staff's position on any particular matter or to explain why the staff did not use alternative data, assumptions, or analyses in its reviews. It would provide added assurance that scarce staff resources would not be expended unnecessarily at the pretrial stage of the hearing on matters not directly pertinent to the staff's position in the hearing. Despite the proposed amendment, it would, of course, still be permissible for a party to argue at the hearing that the staff should performed additional studies or relied on alternative data.

Evidence (10 CFR 2.743) Cross-Examination Plan—Item 4)

The proposed amendments to § 2.743 would require a party to a proceeding to obtain the permission of the presiding officer in order to conduct cross-examination and would bar the presiding officer from considering any request to cross-examine unless the request was accompanied by a cross-examination plan containing specified information. As proposed, the required cross-examination plan would include a brief description of the issue or issues on which the cross-examination would be conducted, the objective to be achieved by cross-examination, and a proposed line of questions which logically may lead to achieving the objective of the cross-examination, together with the postulated answers which might be reasonably anticipated. The cross-examination plan would be available only to the presiding officer and to the members of the Board and would be kept confidential until after the Licensing Board had rendered its decision on the issue litigated. In order to ensure a complete record on appeal, the proposed amendments would require the presiding officer to include each cross-examination plan and any order relating thereto in the record of the proceeding certified on appeal.

In the opinion of the Commission, this proposed requirement to submit a cross-examination plan should assist the presiding officer both in deciding whether to grant or deny a request for cross-examination and in assuring that any cross-examination actually conducted is responsive and productive. By using the cross-examination plan as a method of control, the value of cross-examination should be enhanced and the number of cluttered trial records produced as a result of unfocused questioning should be significantly reduced.

In determining whether to permit cross-examination on a particular issue, the presiding officer should consider whether the cross-examination plan contains the required information and whether the requested cross-examination is necessary for a full and true disclosure of the facts. This is the standard set forth in section 7(c) of the Administrative Procedure Act, 5 U.S.C. 556(d), and existing 2.743(a). *See Seacoast Anti- Pollution League* v. *Costle*, 572 F.2d 872 (1st Cir.), *cert. denied*, 439 U.S. 824 (1978); *Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 867 n. 16 (1974), *reconsideration denied*, ALAB-252, 8 AEC 1175, *aff'd*, CLI-75-1, 1 NRC 1 (1975).

Under existing NRC practice, cross-examination may not be used to expand the number or scope of contested issues. *Prairie Island, supra*, 8 AEC at 867. The Commission's rules authorize the presiding officer to regulate the course of the hearing and to take necessary and proper measures to prevent argumentative, repetitious, or cumulative cross-examination. 10 CFR 2.718, 2.757(c). The proposed rule is intended to formalize this practice to assist the presiding officer in ensuring that appropriate limitations on the use of cross-examination are observed.

Authority of Presiding Officer To Dispose of Certain Issues on the Pleadings (10 CFR 2.749) (Summary Disposition—Item 5)

The proposed amendment to § 2.749(a) would permit motions for summary disposition to be filed at any time during the proceeding, including during the hearing, instead of requiring such motions to be filed well in advance of the hearing and within such time as may be fixed by the presiding officer, as provided in the existing rule. This change is intended to give the parties maximum flexibility to file such motions and to make it possible to terminate litigation at any point during the proceeding when it becomes apparent that a genuine issue of fact is no longer in dispute.

Proposed Findings and Conclusions (10 CFR 2.754) Appeals to the Commission From Initial Decisions (10 CFR 2.762) (Limitations—Items 6 and 7)

The proposed amendments to § 2.754(c) would limit an intervenor's filings of proposed findings of fact and conclusions of law to issues which that party actually placed in controversy or sought to place in controversy in the proceeding. The proposed amendments to § 2.762(d) would similarly limit the issues which an intervenor could raise in an appellate brief.

Present NRC parctice permits any party to file proposed findings of fact and conclusions of law on any issue in the proceeding, including issues not placed in controversy by that party, and to appeal on all issues whether or not those issues were raised by the party's own contentions. This general principle is subject to the limitation that a party must have a discernible interest in the outcome of the particular issue being considered.[4] In practice, however, the adjudicatory boards have not generally examined an intervenor's filings to determine whether the intervenor possesses the requisite interest with regard to a particular issue, as set forth in the petition to intervene. In addition, intervenors may have such broad, generalized interests in NRC proceedings that an examination of their filings in light of this limitation would do little to reduce the volume of filings that the adjudicatory boards must consider. The purpose of the proposed change is to ensure that presiding officers and agency appellate tribunals are able to focus on the disputed issues in the proceeding as presented and argued by the parties with a primary interest in the issue. The proposed change also should ensure that these same presiding officers and appellate tribunals are not inundated by a multiplicity of extraneous filings from persons with little or no stake in the resolution of a particular issue. The proponent of a contention is responsible for making its case on the issue at the hearing and can therefore be expected to present and argue its case on the contention much more persuasively than a party who elects to argue an issue only in legal papers filed after the evidentiary portion of the hearing is completed.

The proposed amendments are not applicable to license applicants or to NRC staff. License applicants have the burden of proof. The NRC staff has an overall interest in the proceeding to ensure that public health and safety and environmental values are protected. Each has an obvious interest in filing proposed findings of fact and conclusions of law on most, if not all, contested issues and in taking appeals when they are adversely affected by the presiding officer's decision. If these proposed amendments are adopted, presiding officers and appellate tribunals will be expected to strike those portions of proposed findings of fact, proposed conclusions of law, and appellate briefs filed in contravention of these sections of the Commission's rules.

[4] *See Northern States Power Co.* (Prairie Island Nuclear Generating Plant, Units 1 and 2), ALAB-244, 8 AEC 857, 870 n. 19 (1974); *reconsideration denied*, ALAB-252, 8 AEC 1175, *aff'd*, CLI-75-1, 1 NRC 1 (1975).

II. Proposals of Commissioner Asselstine

The proposals of the RRTF did not satisfy completely the concerns of all the Commissioners. Commissioner Asselstine was particularly dissatisfied with the scope and direction of the RRTF proposals. At the January 9, 1985 meeting of the Commission, Commissioner Asselstine submitted his proposals for Commission consideration. The Commission agreed to publish several of his proposals for comment and requested the staff to draft a notice of proposed rulemaking that incorporated Commissioner Asselstine's proposals.

While the Commission requests public comment on Commissioner Asselstine's proposals for the purpose of giving them further consideration, the Commission does not necessarily endorse in full the discussion of the proposals that follows. If commenters agree or disagree with aspects of that discussion, they can so note in their comments.

Commissioner Asselstines believes that his proposals would improve the efficiency of the licensing process yet provide for full public participation in that process. In contrast to the broad changes suggested by RRTF, Commissioner Asselstine's proposals focus narrowly on intervention and public participation in the licensing process. It is Commissioner Asselstine's opinion that his moderate changes to the intervention process would attain the goals sought by RRTF and yet maintain a satisfactory level of fairness to all participants and the public.

Current practice requires petitions for leave to intervene to be filed within a time specified in the notice of hearing. This filing deadline is not related to the time at which a decision on the petition is made. Instead, the decision to allow intervention is delayed until contentions have been filed.

Commissioner Asselstine believes that this is inefficient. First, it requires persons to file petitions within a time priod that has little connection with the time frame for the decision on the petition. Second, it requires persons who do not have the requisite interest in the proceeding to spend time, effort, and money drafting contentions which that person would not be entitled to advance. Third, the framework mixes a decision on the standing of a person to intervene with the ability of the putative intervenor to draft valid contentions. This, according to Commissioner Asselstine, is akin to the judiciary determining that a litigant lacks standing to prosecute a lawsuit by concluding that the litigant does not have a meritorious claim despite the litigant's clear interest in the outcome.[5]

Commissioner Asselstine's proposed revision to the intervention process would separate the decision on standing from the decision on the validity of contentions. By requiring a decision on the intervention petition prior to the filing of contentions, Commissioner Asselstine expects to alleviate some of the problems with current NRC practice.

Since a decision on standing would precede a decision on the validity of a contention, the process for drafting and filing contentions also would undergo revision. Another revision to the intervention process would provide for a ninety-day period to draft contentions. At the end of that period and prior to discovery, the contentions would have to survive an initial screening with respect to their validity.

A more rigorous test of contentions would be undertaken after discovery was completed. At this stage, the presiding officer would have to determine whether or not a genuine issue of a material fact exists with respect to each contention. If the presiding officer finds that no issue exists, then a hearing would not be held on that specific issue.

In addition to these changes, Commissioner Asselstine would require the Commission to publish, prior to the docketing of an application, a notice that an application for a construction permit or operating license has been filed. In Commissioner Asselstine's opinion this would ensure full public

[5] In the context of judicial decisionmaking, a determination of a person's standing to litigate by ruling on the merits of the litigation creates problems of constitutional significance. *See Warth v. Seldin*, 422 U.S. 490, 498–502(1975). While the problem of standing as it pertains to administrative hearings may not create questions of a constitutional dimension, the problem, nevertheless, is significant. Failure to apply appropriate criteria in determining standing can lead to a cluttered record and a hearing in which valuable time and resources can be squandered on essentially irrelevant issues.

awareness of proposed actions and would enable the NRC, the utility, and the public to meet informally to identify and resolve questions and concerns of interest to the public.

Commissioner Asselstine believes that these changes would remove some of the problems of the existing regulations. Individuals without appropriate interest in the proceeding would not be filing contentions, contentions without any validity would not be the subject of discovery, and contentions that do not raise genuine issues of fact would not be addressed in a hearing. These moderate constraints on formal interventions would be balanced by expanding the opportunities for informal public participation at a much earlier stage of the licensing process and in greater depth than is now possible.

At the Commission's direction, the Chairman of the Atomic Safety and Licensing Board Panel prepared a revised version of 10 CFR Part 2. This rewrite of Part 2 is available in the Commission's Public Document Room. A majority of the Commission has previously voted not to solicit comments on this proposal and has indicated that it does not propose to consider such comments at this time.

Nonetheless, Commissioner Asselstine believes that the Licensing Board Panel rewrite contains a number of useful ideas for improving the Commission's Rules of Practice. He would appreciate any comments on this revision to Part 2 in addition to comments on this proposed rule.

Section-by-Section Analysis of Commissioner Asselstine's Proposals

Definitions (10 CFR 2.4) (Item 8)

One addition is made to the definitions. The regulations of the Commission do not define a "local public document room." This room is an integral part of the NRC's program to ensure public awareness and participation. Therefore, a definition of a "local public document room" (LPDR) that mirrors the definition of the Commission's public document room has been added. Commissioner Asselstine's proposal would also codify existing staff practice, which is to establish an LPDR as soon as an application is filed.

Filing of Application (10 CFR 2.101) (Item 9)

A number of revisions would be made to this section under Commissioner Asselstine's proposal. The most important change would involve the addition of a new paragraph requiring the publication of a notice of receipt of an application.

Current NRC practice requires publication of a notice at the time an application is docketed. At this point, the time period for filing petitions for leave to intervene commences. The new paragraph (a)(2) would require publication prior to docketing.

Commissioner Asselstine's proposal would require the NRC to publish a notice in the **Federal Register** that it has received an application. In some circumstances, the regulations would permit an applicant to file an application in separate parts. In these instances, the proposal would require publication of a notice of receipt at the time the earliest filing is made with the NRC. The proposal also would require the NRC to establish a local public document room at the time it publishes the notice of receipt.

These revisions would enable interested persons to notify the NRC of their interest in the application at the earliest possible stage of the licensing process. These persons would then be kept informed, either directly or through the local public document room, of the progress of the application. This early notification also would allow the NRC staff to meet with interested persons before formal procedures regarding intervention commence.

The final change in the regulation as proposed by Commissioner Asselstine would delete the provision for early publication of a notice that an application has been received if the NRC decides to review the application for technical adequacy pursuant to § 2.101(a)(2). Since the notice of receipt would be published at the time the application is received, retention of a special provision for this kind of review would be redundant.

Notice of hearing (10 CFR 2.104) (Item 10)

One of the two revisions to this section proposed by Commissioner Asselstine would require the Commission to publish a notice of hearing at the same time that the Commission dockets the application for a construction permit. Applications for early site review are excepted because the notification procedures pertaining to early site review provide sufficient notice to the persons that might be affected by an early site review.

The other revision is more significant. This revision would add a new paragraph (5) to § 2.104(a) and would require the notice of hearing to state that petitions to intervene must be filed no later than thirty days after the notice of hearing is published.

The current version of the rules does not specify a time period for the submission of petitions for leave to intervene. The submission of petitions may take as long as the notice specifies even if it is longer than thirty days.

These revisions to § 2.104 proposed by Commissioner Asselstine would streamline the process of intervention by forcing the intervenors to submit petitions within thirty days. This should result in the early identification of those persons with standing to participate as parties to the proceeding. Late filed intervention petitions would be considered as provided in the Commission's rules.

Notice of Proposed Action (10 CFR 2.105) (Item 11)

The revisions to this section proposed by Commissioner Asselstine are designed to streamline the intervention process in proceedings in which a hearing is not required by law or Commission directive. The proposed modification to paragraph (a)(8) would require issuance of the required notice at the time an application is docketed. Similarly, the proposed revision to paragraph (e)(2) would require the presiding officer to decide whether to grant a request for hearing and/or petition for leave to intervene as soon as practicable after the filing deadline specified in the notice has closed.

Without these proposed modifications, Commissioner Asselstine believes that the possibility would exist that a proceeding in which a hearing is not required would take longer than a proceeding in which a hearing is required because the NRC took too much time either to issue the required notice of proposed action or to decide whether to grant petitions for leave to intervene and/or requests for a hearing. No logical reason exists for this result. The proposed rules would ensure that proceedings that do not require hearings would proceed with appropriate celerity.

Intervention (10 CFR 2.714) (Item 15)

The main focus of Commissioner Asselstine's proposals would involve the rules governing intervention. Specifically, Commissioner Asselstine would not require the contentions be drafted before a decision on the intervention petition is made. After that decision is handed down, the drafting of contentions would commence under modified procedures.

To accomplish this restructuring, substantial revisions would be made in § 2.714. Paragraph (a)(1) would be rewritten to take account of the change

in the notice provisions of § 2.104. Paragraph (e) would be redesignated paragraph (d) and rewritten to require that the presiding officer grant or deny the petition and/or, in certain instances, a request for a hearing as soon as practicable after the filing period has closed.

Paragraph (b) would be redesignated paragraph (h) and would be revised to require that the period for drafting contentions not commence until a decision on intervention has been made. In addition, the revision to paragraph (b) would contain more detailed requirements for the drafting of contentions and would provide for a ninety-day period in which to file contentions after the orders on intervention had issued. The ninety-day period also would apply to any order with respect to a request for a hearing made pursuant to § 2.105.

Commissioner Asselstine believes that these changes would represent an improvement over current practice. By requiring that the contention drafting period not commence until after the decision to grant or deny the intervention petition, Commissioner Asselstine would separate the decision on intervention from the decision on the validity of contentions.

As a result of this revision, the presiding officer may not have to review as many contentions because persons without sufficient interest to establish standing as a party would not be permitted to file contentions. In addition, the possible reduced workload should enable the presiding officer to devote more time to reviewing the validity of contentions filed by persons who have a sufficient stake in the outcome of the proceeding.

Besides changing the order of the proceeding, Commissioner Asselstine's revision to paragraph (b) would add some greater rigor to the drafting of contentions. No longer would it be sufficient for the intervenor to file an unsupported list of specific contentions. Under the proposal, the intervenor would have ninety days to draft contentions which must include a brief statement of significant facts that support the contention and citations to documents or sources which have been or will be used to establish such facts. Thus, contentions would have to have at least some scientific or legal underpinning. This also would reduce the number of contentions that the presiding officer would have to review. The increase in efficiency is obvious.

Commissioner Asselstine believes that efficient adjudication is not the primary goal of a hearing on a construction permit or operating license application. He therefore does not want to sacrifice the ability of intervenors to address their valid concerns in the name of efficiency. Commissioner Asselstine recognizes that ninety days is a short period when dealing with an issue as complex as nuclear power. Therefore, he especially seeks comments on the sufficiency of the ninety-day period to accomplish the tasks that would be required by the revision to paragraph (b). Commissioner Asselstine also seeks comment on the advisability of revising the Commission's rules governing the consideration of late-filed contentions to require the admission of any late-filed contention upon a showing of good cause due to the institutional unavailability of the information which establishes the factual basis for the contention.

Special Prehearing Conference in Construction Permit and Operating License Proceedings (10 CFR 2.751a) (Item 16)

The revisions to § 2.714 proposed by Commissioner Asselstine would necessitate certain changes to this section. First, paragraph (a) would be amended so that the time limits for a prehearing conference conform to the time limits for drafting contentions. Second, in paragraphs (a)(3) and (d), references to decisions on the status of intervenors would be deleted. Third, and most significant, the revisions of paragraphs (a)(3) and (d) to this section would require that a provisional or, in some cases, a final determination on the admissibility of contentions be made.

Under Commissioner Asselstine's proposal, provisional admittance of contentions would occur if the requirements of revised § 2.714 were met and the presiding officer determined that a set of facts exist which, if true, would entitle the intervenor to relief. This latter requirement is similar to the calculus used by the federal courts in deciding motions to dismiss for a failure to state a claim upon which relief can be granted. *See Conley* v. *Gibson*, 355 U.S. 41, 45–48 (1957).

It is Commissioner Asselstine's view that this proposal would eliminate all contentions that clearly have no basis in fact or have no bearing on the outcome of the proceeding. In either event, more time could be devoted to issues that have some impact on the outcome of the proceeding.

Prehearing Conference (10 CFR 2.752) (Item 17)

The revision proposed by Commissioner Asselstine would add a new paragraph (a)(6) to this section. This addition would require the presiding officer to decide whether a hearing should be held on the contentions filed by an intervenor. To obtain a hearing on a contention, an intervenor would have to establish that a genuine issue of material fact exists. Although the proposed revision duplicates the summary disposition standard, the burden would not be as rigorous. For purposes of the decision required by the amendment, the intervenor would not have to make detailed factual allegations. Rather, the intervenor would only need to show that an "inquiry in depth" is appropriate. Once that showing is made, the intervenor would have established that a genuine issue of material facts exists. This standard was adopted from the D.C. Circuit's decision in *Independent Bankers Ass'n* v. *Board of Governors*, 516 F.2d 1206 1220 n.57 (D.C. Cir. 1975).

In Commissioner Asselstine's opinion, the result of this proposal could be a further reduction in the number of issues to be considered at a hearing. Accordingly, more time could be devoted to the issues of real significance. In addition, the hearing could take less time.

Environmental Impact—Categorical Exclusion

The proposed amendments would amend the Commission's Rules of Practice condifed in 10 CFR Part 2 and therefore meet the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(1). Accordingly, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the proposed amendments.

Paperwork Reduction Act Review

The information collection requirements contained in this proposed rule are exempt from the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3518).

Backfit Analysis

This proposed rule does not modify or add to systems, structures, components, or design of a facility; the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct, or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this proposed rule.

Regulatory Flexibility Act Certification

The proposed rule will reduce the procedural burden on NRC licensees by improving the hearing process. The

impact on intervenors or potential intervenors will be neutral. While intervenors or potential intervenors will have to meet a higher threshold to gain admission to NRC proceedings and, thereby, incur some additional economic costs in preparing requests for hearing or requests to intervene, the proposed improvements should reduce intervenors' cost once the hearing commences. Thus, in accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), and the NRC Size Standards (50 FR 50241), the Commission certifies that this rule, if promulgated, will not have a significant economic impact upon a substantial number of small entities and that therefore a regulatory flexibility analysis need not be prepared.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preable and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the Nuclear Regulatory Commission is proposing to adopt the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDING

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.300–2.309 also issued under Pub. L. 97–415, 96 Stat. 2071 (42 U.S.C. 2133). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91–580, 84 Stat. 1473 (42 U.S.C. 2135).

2. In paragraphs (a) and (f) of § 2.714, the words "paragraph (d) of this section" which appear in the fourth sentence of paragraph (a)(1), in the single sentence in paragraph (a)(2) and in the single sentence in paragraph (f) are revised to read "paragraph (d)(1) of this section." Paragraphs (b), (c), and (d) of § 2.714 are also revised to read as follows:

§ 2.714 Intervention.

* * * * *

(b) (1) Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a, or if no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his or her petition to intervene that must include a list of the contentions which petitioner seeks to have litigated in the hearing. A petitioner who fails to file a supplement that satisfies the requirements of paragraph (b)(2) of this section with respect to at least one contention will not be permitted to participate as a party. Additional time for filing the supplement may be granted based upon a balancing of the factors in paragraph (a)(1) of this section.

(2) Each contention must consist of a specific statement of the issue of law, fact, or policy to be raised or controverted. In addition, the petitioner shall provide the following information with respect to each contention:

(i) A brief explanation of the bases of the contention.

(ii) A concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing, together with references to those specific sources and documents of which the petitioner is aware and on which the petitioner will rely to establish those facts or expert opinion.

(iii) Sufficient information (which may include information pursuant to paragraphs (b)(2) (i) and (ii) of this section) to show that a genuine dispute exists with the applicant on an issue of law, fact, or policy. This showing must include references to the specific portions of the application (including the applicant's environmental report and safety report) that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's document.

(c) Any party to a proceeding may file an answer to a petition for leave to intervene within ten (10) days after service of the petition, with particular reference to the factors set forth in paragraph (d)(1) of this section. The staff may file such an answer within fifteen (15) days after service of the petition.

(d) The Commission, the presiding officer or the atomic safety and licensing board designated to rule on petitions to intervene or requests for hearing or the admissibility of contentions shall, in ruling on—

(1) A petition for leave to intervene or a request for a hearing, consider the following factors, among other things:

(i) The nature of the petitioner's right under the Act to be made a party to the proceeding.

(ii) The nature and extent of the petitioner's property, financial, or other interest in the proceeding.

(iii) The possible effect of any order that may be entered in the proceeding on the petitioner's interest.

(2) The admissibility of a contention, and refuse to admit a contention if:

(i) The contention and supporting material fail to satisfy the requirements of paragraph (b)(2) of this section. In determining whether a genuine dispute exists on a material issue of law, fact, or policy, the Commission or the presiding officer shall consider whether the information presented pursuant to paragraph (b)(2) of this section prompts reasonable minds to inquire further as to the validity of the contention; or

(ii) It appears unlikely that petitioner can prove a set of facts in support of its contention; or

(iii) The contention, if proven, would be of no consequence in the proceeding because it would not entitle petitioner to relief; or

(iv) The contention raises only an issue of law. contentions raising only an issue of law may not be admitted for resolution in an evidentiary hearing, but rather, must be decided on the basis of briefs or oral argument as directed by the Commission or presiding officer.

* * * * *

3. In § 2.720, paragraph (h)(2)(ii) is revised to read as follows:

§ 2.720 Subpoenas.

* * * * *

(h) * * *

(2) * * *

(ii) In addition, a party may file with the presiding officer written interrogatories to be answered by NRC personnal with knowledge of the facts designated by the Executive Director for Operations. Upon a finding by the presiding officer that answers to the interrogatories are necessary to a proper decision in the proceeding and that answers to the interrogatories are not reasonably obtainable from any other source, such as from the Commission's Public Document Room or Local Public Document Room, the presiding officer may require that the staff answer the interrogatories. Such interrogatories may seek to elicit factual information reasonably related to the NRC staff's position in the proceeding, including data used, assumptions made, and analyses performed by the NRC staff. Such interrogatories may not, however, be addressed to, or be construed to require: (A) Reasons for not using alternative data, assumptions, and analyses where the alternative data, assumptions, and analyses were not relied on in the NRC staff review; or (B) Performance of additional research or analytical work beyond that which is needed to support the NRC staff's position on any particular matter.

* * * * *

4. In § 2.743, paragraphs (a) and (b) are revised to read as follows:

§ 2.743 Evidence.

(a) *General.* Every party to a proceeding shall have the right to present such oral or documentary evidence and rebuttal evidence and to conduct, in accordance with an approved cross-examination plan that contains the information specified in paragraph (b)(2) of this section, such cross-examination as may be required for full and true disclosure of the facts.

(b) *Testimony and cross-examination.* (1) The parties shall submit direct testimony of witnesses in written form, unless otherwise ordered by the presiding officer on the basis of objections presented. In any proceeding in which advance written testimony is to be used, each party shall serve copies of its proposed written testimony on each other party at least fifteen (15) days in advance of the session of the hearing at which its testimony is to be presented. The presiding officer may permit the introduction of written testimony not so served, either with the consent of all parties present or after they have had a reasonable opportunity to examine it. Written testimomy must be incorporated in the transcript of the record as if read or, in the discretion of the presiding officer, may be offered and admitted in evidence as an exhibit.

(2) Any party seeking an opportunity to cross-examine shall request permission from the presiding officer. The presiding officer shall not consider any request to conduct a cross-examination unless the request is accompanied by a cross-examination plan that contains the following information:

(i) A brief description of the issue or issues on which cross-examination will be conducted;

(ii) The objective to be achieved by cross-examination; and

(iii) The proposed line of questions that may logically lead to achieving the objective of the cross-examination, together with the postulated answers which might be reasonably anticipated.

The cross-examination plan may be submitted only to the presiding officer and to the members of the Board and must be kept by them in confidence. The presiding officer shall include each cross-examination plan and any order relating thereto in the record of the proceeding certified on appeal.

(3) Paragraphs (b) (1) and (2) of this section do not apply to proceedings under Subpart B of this part for modification, suspension, or revocation of a license.

* * * * *

5. In § 2.749, paragraph (a) is revised to read as follows:

§ 2.749 Authority of presiding officer to dispose of certain issues on the pleadings.

(a) Any party to a proceeding may move, with or without supporting affidavits, for a decision by the presiding officer in that party's favor as to all or any part of the matters involved in the proceeding. The moving party shall annex to the motion a separate, short, and concise statement of the material facts as to which the moving party contends that there is no genuine issue to be heard. Motions may be filed at any time. Any other party may serve an answer supporting or opposing the motion, with or without affidavits, within twenty (20) days after service of the motion. The party shall annex and answer opposing the motion a separate, short, and concise statement of the material facts as to which it is contended that there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party. The opposing party may, within ten (10) days after service, respond in writing to new facts and arguments presented in any statement filed in support of the motion. No further supporting statements or responses thereto may be entertained.

* * * * *

6. In § 2.754, paragraph (c) is revised to read as follows:

§ 2.754 Proposed findings and conclusions.

* * * * *

(c) Proposed findings of fact must be clearly and concisely set forth in numbered paragraphs and must be confined to the material issues of fact presented on the record, with exact citations to the transcript of record and exhibits in support of each proposed finding. Proposed conclusions of law must be set forth in numbered paragraphs as to all material issues of law or discretion presented on the record. An intervenor's proposed findings of fact and conclusions of law must be confined to issues which that party placed in controversy or sought to place in controversy in the proceeding.

7. In § 2.762, paragraph (d) is revised to read as follows:

§ 2.762 Appeals to the Commission from initial decisions.

* * * * *

(d) *Brief Content.* A brief in excess of ten (10) pages must contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, regulations, and other authorities cited, with references to the pages of the brief where they are cited.

(1) An appellant's brief must clearly identify the errors of fact or law that are the subject of the appeal. An intervenor-appellant's brief must be confined to issues which the intervenor-appellant placed in controversy or sought to place in controversy in the proceeding. For each issue appealed, the precise portion of the record relied upon in support of the assertion of error must also be provided.

(2) Each responsive brief must contain a reference to the precise portion of the record which supports each factual assertion made.

* * * * *

Commissioner Asselstine's Proposals

8. In § 2.4, paragraph (k) is revised to read as follows:

§ 2.4 Definitions.

* * * * *

(k) "Public Document Room" means the place at 1717 H Street NW., Washington, DC, at which public records of the Commission will ordinarily be made available for inspection. "Local Public Document Room" means the place near the proposed facility or activity at which public records of the Commission regarding that facility or activity will ordinarily be made available for inspection.

* * * * *

9. In § 2.101, paragraph (a) is amended as follows:

Paragraphs (a)(3), (4), and (5) are redesignated as paragraphs (a)(4), (5), and (6);

In the first sentence of redesignated paragraph (a)(4), the reference to "(a)(5)" is changed to "(a)(6)";

In the second sentence of redesignated paragraph (a)(4)(ii), the reference to "(a)(3)(ii)" is changed to "(a)(4)(ii)";

Paragraph (a)(2) is revised and redesignated paragraph (a)(3); and a new paragraph (a)(2) is added to read as follows:

§ 2.101 Filing of application.

(a) (1) * * *

(2) Upon the receipt of an application for a license for a facility described in § 50.21(b) or § 50.22 of this chapter, the Commission shall publish a notice of receipt of the application in the **Federal Register**. If the application is for a nuclear power reactor, the notice must identify the Local Public Document Room where information relating to the application will be available for public inspection. If the application is submitted in three parts, as permitted in paragraph (a)(6) of this section, the date of receipt of the application will be the earliest date on which any part of the application is submitted. A copy of the application and the notice of receipt will be available for public inspection in the Commission's Public Document Room, and in the Local Public Document Room identified in this notice.

(3) Each application for a license for a facility or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee will be assigned a docket number. However, to allow a determinaiton of whether an application for a construction permit or operating license for a production or utilization facility is complete and acceptable for docketing, it will be initially treated as a tendered application. For those applications not subject to the advance notification procedures in § 2.101(a)(2), a copy of the tendered application will be available for public inspection in the Commission's Public Document Room. Generally, a determination of acceptability for docketing will be made within thirty (30) days. However, in selected construction permit applications, the Commission may decide to determine acceptability for docketing on the basis of the technical adequacy of the application as well as its completeness. In such cases, the determination of acceptability will generally be made within a period of sixty (60) days. For docketing and other requirements for applications pursuant to Part 61 of this chapter, see paragraph (g) of this section.

* * * * *

10. In § 2.104, paragraph (a) is revised to read as follows:

§ 2.104 Notice of hearing.

(a) (1) In the case of an application on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest, the Secretary will issue a notice of hearing to be published in the **Federal Register** as required by law at least fifteen (15) days, and in the case of an application concerning a construction permit for a facility of the type described in § 50.21(b) or § 50.22 of this chapter or a testing facility, at least thirty (30) days, prior to the date set for hearing in the notice.

(2) If the notice of hearing concerning an application for a construction permit for a facility of the type described in § 50.21(b) or § 50.22 of this chapter or a testing facility does not specify the time and place of initial hearing, a subsequent notice will be published in the **Federal Register** which will provide at least thirty (30) days notice of the time and place of that hearing. After this notice is given, the presiding officer may reschedule the commencement of the initial hearing for a later date or reconvene a recessed hearing without again providing thirty (30) days notice.

(3) In addition, in the case of an application for a construction permit for facility of the type described in § 50.22 of this chapter, or a testing facility, the notice (other than a notice pursuant to paragraph (d) of this section) must be issued at the time the application is docketed except as otherwise provided by §§ 2.101(a–1), 2.603, and 2.604 and by Appendix Q to Part 50 of this chapter. The notice of hearing and the notice of docketing required by § 2.101(d) may be combined and issued as a single notice. The notice will state:

(i) The time, place, and nature of the hearing and/or prehearing conference, if any;

(ii) The authority under which the hearing is to be held;

(iii) The matters of fact and law to be considered;

(iv) The time within which answers to the notice shall be filed; and

(v) That petitions to intervene must be filed no later than thirty (30) days after the docketing of the application.

11. In § 2.105, paragraphs (a)(8) and (e)(2) are revised to read as follows:

§ 2.105 Notice of proposed action.

(a) * * *

* * * * *

(8) In the case of an application for an operating license for a facility of a type described in § 50.21(b) or § 50.22 of this chapter or a testing facility, a notice of opportunity for hearing must be issued upon docketing of the application.

* * * * *

(e) * * *

(2) If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in the notice, the presiding officer, who shall be an Atomic Safety and Licensing Board established by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request or petition as soon as practicable after the filing date specified in paragraph (d) of this section has closed. The Secretary or the presiding officer shall issue a notice of hearing or an appropriate order. The presiding officer designated to rule on a request or petition concerning the antitrust aspects of an application may be either an Administrative Law Judge or an Atomic Safety and Licensing Board.

§ 2.110 [Amended]

12. In § 2.110, paragraph (a)(2) is amended by changing the reference to "§ 2.101(a)(2)–(a)(4)" to "§ 2.101(a)(3)–(a)(5)."

§ 2.603 [Amended]

13. In § 2.603, the third sentence of paragraph (b)(1) is amended by changing the reference to "§ 2.101 (a)(3) and (a)(4)" to "§ 2.101 (a)(4) and (a)(5)."

§ 2.604 [Amended]

14. In § 2.604, paragraph (c) is amended by changing the reference to "§ 2.714(d)" to "§ 2.714(c)."

15. In § 2.714, paragraph (b) is redesignated (h); paragraphs (c), (d), (e), (f), (g), and (h) are redesignated (b), (c), (d), (e), (f), and (g); and paragraph (a)(1), and redesignated paragraphs (d) and (h) are revised to read as follows:

§ 2.714 Intervention.

(a)(1)(i) Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition for leave to intervene or request a hearing as follows:

(A) In a proceeding on antitrust matters noticed pursuant to § 2.102(d)(3), a petition to intervene or a request for a hearing must be filed no later than thirty (30) days after publication of the notice.

(B) In a proceeding noticed pursuant to § 2.104(a), the petition to intervene must be filed no later than the time specified in the notice published pursuant to § 2.104(a) but in no event may the time be less than thirty (30) days after publication of the notice.

(C) In a proceeding noticed pursuant to § 2.105, a petition to intervene or a request for a hearing must be filed no later than the time specified in the notice of proposed action.

(ii) Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition or request, that the petition or request should be granted based upon a balancing of the following factors in addition to those set out in paragraph (c) of this section:

(A) Good cause, if any, for failure to file on time.

(B) The availability of other means whereby the petitioner's interest will be protected.

(C) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(D) The extent to which the petitioner's interest will be represented by existing parties.

(E) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

* * * * *

(d) An order permitting or denying intervention or directing that a hearing be held must be made as soon as practicable after the period for filing petitions or requests has closed. This order may be conditioned on such terms as the Commission, the presiding officer, or the designated Atomic Safety and Licensing Board may direct in the interests of: (1) Restricting irrelevant, duplicative, or repetitive evidence and argument, (2) having common interests represented by a spokesman, and (3) retaining authority to determine priorities and control the compass of the hearing.

* * * * *

(h) Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a, or where no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference, but in no event less than ninety (90) days after the issuance of an order pursuant to paragraph (d) of this section or paragraph (e)(2) of § 2.105, the intervenor shall file a list of contentions which the intervenor seeks to have litigated in the proceeding and the bases for each contention. In addition, the intervenor shall support each contention with a brief statement of the significant facts known to the intervenor that support the contention, together with references to the sources and documents which have been or will be relied on to establish such facts. Additional time for filing the information described in this paragraph may be granted based upon a balancing of the factors in paragraphs (a)(1)(ii)(A)–(E) of this section.

16. In § 2.751a, the introductory text to paragraphs (a), and paragraphs (a)(3) and (d) are revised to read as follows:

§ 2.751a Special prehearing conference in construction permit and operating license proceedings.

(a) In any proceeding involving an application for a construction permit or an operating licnese for a production or utilization facility, the Commission or the presiding officer shall direct the parties or their counsel to appear at a special place and at specified time which must be at least ninety (90) days after issuance of an order pursuant to §§ 2.105(e)(2) or 2.714(d) for a conference [7] to—

* * * * *

(3) Consider all contentions of the intervenors to allow the presiding officer to make such provisional or final determination as to the admissibility of each contention, as may be appropriate. A contention will be admitted provisionally if it satisfies the criteria set forth in § 2.714(h) and the presiding officer determines that the intervenor has identified a set of facts in support of its contention which, if true, would entitle the intervenor to relief. If an intervenor does not list at least one contention which satisfies the requirements of this paragraph, that intervenor, absent a showing of good cause, will lose its status as a party to the proceeding; and

* * * * *

(d) The presiding officer shall enter an order which recites the action taken at the conference, the schedule for futher actions in the proceeding, any agreements by the parties, and which identifies key issues in the proceeding, makes provisional or final determiantions pursuant to paragraph (a)(3) of this section, and provides for the submission of status reports on discovery. The order must be served upon all parties to the proceeding. Objections to the order may be filed by a party within five (5) days after service of the order, except that the staff may file objections to such order within ten (10) days after service. Parties may not file replies to the objections unless the Board so directs. The filing of objections will not stay the decision unless the presiding officer so orders. The Board may revise the order in consideration of the objections presented and, as permitted by § 2.718(i), may certify for determination to the Commission or the Atomic Safety and Licensing Appeal Board, as appropriate, such matters raised in the objections as it deems appropriate. The order will control the subsequent course of the proceeding unless modified for good cause.

17. In § 2.752, the word "and" following paragraph (a)(5) is removed; paragraph (a)(6) is redesignated (a)(7); and a new paragraph (a)(6) is added to read as follows:

§ 2.752 Prehearing conference.

(a) * * *

* * * * *

(6) The need for a hearing on the contentions filed by any and all intervenors. A hearing must be held on a contention unless the presiding officer finds that no genuine issue of material fact exists with regard to the contention; and

* * * * *

Dated at Washington, DC, this 30th day of June 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86–15087 Filed 7–2–86; 8:45 am]

BILLING CODE 7590-01-M

[7] This conference may be omitted in proceedings other than contested proceedings.

FEDERAL TRADE COMMISSION

16 CFR Part 307

Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On February 27, 1986, the President signed into law the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Smokeless Tobacco Act). The Smokeless Tobacco Act requires, among other things, that one year after the date of enactment manufacturers, packagers, and importers of smokeless tobacco products include health warnings on their packages and in most of their advertisements. It also directs the Federal Trade Commission to issue regulations that establish requirements for the display of health warnings in the labeling and advertising of smokeless tobacco products and the submission of plans specifying the method used to rotate, display, and distribute health warnings in the labeling and advertising of these products. This notice announces the proposed regulations drafted by the Commission pursuant to the Smokeless Tobacco Act.

All persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning this proposal.

DATES: Written comments will be accepted on or before August 4, 1986.

ADDRESS: Send comments to Secretary, Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, DC 20580. Submissions should be marked "Proposed Smokeless Tobacco Regulations."

FOR FURTHER INFORMATION CONTACT: Nancy S. Warder (202) 376-8648 or Donald G. D'Amato (202) 376-8617, Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A—Background

One of the fundamental purposes of the Smokeless Tobacco Act is to educate the public about the adverse health effects entailed in smokeless tobacco use. To achieve this end the Smokeless Tobacco Act requires the random display of three health warnings on the packaging and in the advertising of smokeless tobacco products.

Specifically, the Smokeless Tobacco Act mandates that one of the following three health warnings appear in the labeling and advertising (with the exception of outdoor billboard advertising) of smokeless tobacco products.

WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER
WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS
WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES

The Smokeless Tobacco Act also provides that no health warnings other than these three can be required by Federal agency or State action to appear on smokeless tobacco packages or advertising (with the exception of outdoor billboards).

In the case of both advertising and labeling, the Smokeless Tobacco Act requires the display of the warning statement in a conspicuous and prominent place, in conspicuous and legible type in contrast with all other printed material. However, the Smokeless Tobacco Act specifies a circle and arrow format for the warning statement in advertising, but merely requires a conspicuous format for labeling.

The Smokeless Tobacco Act directs the Commission to issue regulations requiring the three warnings to be displayed in labeling in as equal a number of times as possible each year and to be rotated in advertising every 4 months. In addition, the Smokeless Tobacco Act requires the marketers of smokeless tobacco products to submit to the Commission for approval plans for complying with the display requriements. The Smokeless Tobacco Act vests jurisdiction in both the Commission and the Department of Justice to seek injunctive relief for violations, but gives the Department of Justice exclusive jurisdiction to seek criminal penalties.

Section B of this notice discusses the proposed regulations that the Commission has drafted under the Smokeless Tobacco Act.

Section B—Discussion of the Proposed Regulations

Rule 1 (16 CFR 307.1) Scope of Proposed Regulations

Section 307.1 of the proposed regulations sets forth the scope of the proposed regulations. This section indicates that the regulations in this part do not apply to smokeless tobacco products that are not sold or distributed in the United States, as United States is defined in the Smokeless Tobacco Act.

Rule 2 (16 CFR 307.2) Preemption

Section 307.2 repeats the preemption provision of section 7 of the Smokeless Tobacco Act and lays out the three specific health warnings the law requires. Section 7 of the Smokeless Tobacco Act provides that no statement, other than three warning statements required by the Act, shall be required by any Federal, State, or local statute or regulation to be included on the package or in the advertisement (unless the advertisement is an outdoor billboard) of a smokeless tobacco product.

Rule 3 (16 CFR 307.3) Definitions

Section 307.3 defines the following terms, which are used in the proposed regulations: Act, Commission, regulation(s), commerce, United States, smokeless tobacco product, brand, package, label, billboard, manufacturer, packager, and importer.

The term "advertising" is not defined. As Section G indicates, the Commission is particularly interested in receiving comment on whether a definition of "advertising" should be included in this section. Likewise, no definition is provided for the various types of containers (such as cylindrical cans, pouches, and cartons) in which smokeless tobacco products are usually sold.

Among the more substantively important definitions is that of the term "smokeless tobacco product." The definition of "smokeless tobacco product" in the proposed regulations excludes nasal snuff based on the statutory definition of smokeless tobacco which limits that term to tobacco intended to be placed in the oral cavity. In addition, two of the health warnings required by the Smokeless Tobacco Act (referring to mouth cancer and gum disease) relate only to oral use.

As the term "brand" is defined in the proposed regulations, different flavors of a product, such as XYZ Mint and XYZ Wintergreen, are considered to be the same brand. Similarly, different types of products that bear the same name, such as ABC loose-leaf chewing tobacco and ABC plug tobacco are considered one brand.

The definition of "package" includes any pack, can, box, jar, carton, pouch, container, or wrapping in which any smokeless tobacco product is distributed to consumers, but for purposes of the proposed regulations the term "package" does not mean any shipping container used solely for transporting smokeless tobacco products in bulk unless the container is intended for use as a retail display or any container that bears no written, printed, or graphic matter.

"Label" is defined to mean any written, printed, or graphic matter affixed to or appearing on any smokeless tobacco product or any package containing a smokeless tobacco product with the exception of any revenue stamped affixed to a smokeless tobacco product.

The term "billboard" is defined in the proposed regulations as an outdoor sign with an area of more than 150 square feet. The Smokeless Tobacco Act exempts billboard advertising from its requirements.

Rule 4 (16 CFR 307.4) Prohibited Acts and Exemption Procedure

Section 307.4 sets forth the acts that are prohibited by the regulations and contains a subsection providing a procedure for obtaining exemptions from the proposed regulations' requirements and a subsection excusing noncompliance if reasonable steps have been taken to comply.

Subsection (a) of § 307.4 makes the distribution of a smokeless tobacco product without the required warning a prohibited act unless the product has been exempted by a rulemaking proceeding. Under subsection (a) imported smokeless tobacco products may be labeled either here or abroad, but must bear the required warning before they are released from bond. Subsection (a) expressly exempts smokeless tobacco products intended for export from the labeling requirements.

Subsection (b) of § 307.4 provides that no smokeless tobacco company shall advertise or cause to be advertised (other than by outdoor billboards) a smokeless tobacco product without the required warning statement. Accordingly, all advertisements for smokeless tobacco products (including cooperative advertisements) paid for, directly or indirectly, in whole or part, by a smokeless tobacco company must bear the required warning statement, but any advertisement paid for entirely by a retailer or any person other than a manufacturer, packager, or importer of smokeless tobacco products need not carry a warning statement. In addition, this requirement is not applicable to company and divisional names, when used as such, to signs on factories and facilities related to manufacture or storage, to corporate or financial reports, to communications to security holders, to employment advertising, to advertising in trade publications, or to promotional materials not used for public display. Subsection (b) of § 307.4 also exempts point-of-sale promotional materials with a display area of 36 square inches or less and utilitarian items either sold or given to consumers for their personal use such as clothing, sporting goods, spittoons, towels, blankets, and furniture.

Subsection (c) of § 307.4 requires each smokeless tobacco company to submit a plan to the Commission specifying the manner in which it intends to comply with the Smokeless Tobacco Act. Subsection (c) also contains a delegation of authority to the Associate Director for Advertising Practices to approve plans, and includes a right to appeal decisions of the delegate to the Commission as well as a requirement that the delegate refer significant issues to the Commission.

Subsection (d) of § 307.4 sets forth the procedure for obtaining exemptions from the requirements of the regulations. This subsection provides that exemptions may be granted by notice and comment rulemaking. A smokeless tobacco manufacturer may seek an exemption if full compliance with the regulations is impracticable, unnecessary, or unreasonable.

Subsection (e) of § 307.4 provides a safe harbor for smokeless tobacco companies that have taken reasonable steps to comply with the Smokeless Tobacco Act. Although the distribution of smokeless tobacco packages or advertisements without the required warning is prohibited under the proposed regulations, subsection (e) provides that a company shall be deemed to be in compliance if it has contracted or provided instructions for the required labeling, given instructions and when possible furnished acetates and the like for disclosures in advertising, and corrected any errors that come to its attention. Subsection (e) also excuses blurring that occurs for reasons that are beyond a smokeless tobacco company's control. Subsection (e) puts the burden on the company to establish that reasonable steps have been taken to comply with the Smokeless Tobacco Act and the regulations.

Rule 5 (16 CFR 307.5) Language Requirements

Under § 307.5 of the proposed regulations, the required warnings must always appear in English on smokeless tobacco labels, but, in the case of advertisements, must appear in the predominant language of any foreign language publication in which they appear or the predominant language of the selling message.

Rule 6 (16 CFR 307.6) Label Disclosures

Subsection (a) of § 307.6 describes where the warning must be placed on the package. The first sentence of subsection (a) merely repeats the language of section 3(b)(1)(A) of the Smokeless Tobacco Act that requires the label statement to appear "in a conspicuous and prominent place on the package," and the second sentence explains that this is a part of the label that is likely to be seen.

Specific examples of places on a number of types of smokeless tobacco that will be deemed to be prominent are then provided: the side of cylindrical cans; the sides of rectangular packages of snuff or plug chewing tobacco and display cartons (but the sides of these packages must be cleared of other graphic matter to be deemed prominent under the proposed regulations); and the front of a pouch of chewing tobacco. Subsection (a) of § 307.6 also expressly provides that, absent special circumstances, the bottom of a package will not be deemed to be prominent.

Finally, subsection (a) provides that the required warning must only appear once in its entirely anywhere on the package of a smokeless tobacco product that is sold wrapped in a continuous sheet of material with random labeling information. This provision permits certain types of smokeless products (mostly twist tobacco) to continue to be packaged as they traditionally have been.

Subsection (b) of § 307.6 describes the format for the display of the required label statements and the type in which they should be printed. The first sentence of subsection (b) merely reiterates the language of section (3)(1)(B) of the Smokeless Tobacco Act that requires the label statement to appear "in a conspicuous format and in conspicuous and legible type in contrast with all other printed material on the package." Subsection (b) then provides that a statement printed in two to four parallel lines parallel to the bottom of the package will be deemed to be conspicuous. Subsection (b) also provides that the warning need not be parallel to the bottom of the package in the case of cylindrical packages with a diameter of 1 and ¾ inches or less, since a warning parallel to the bottom would be almost impossible to fit on cans like these would be difficult to read in most cases since they are so narrow.

Subsection (b) provides a safe harbor for label statements that are separated from other printed material on the package and printed in all capitals in Univers 47 or an equivalent type style. The subsection then provides a list of examples of type sizes that will be deemed to be conspicuous and legible in the case of four types of smokeless tobacco packages.

Finally, subsection (b) describes the nature of the contrast required for a label statement under section (3)(1)(B) of the Smokeless Tobacco Act. Subsection (b) provides that the contrast will be deemed to be sufficient if the warning is printed in the color used anywhere on the package that is most visible against the background on which the warning appears. This will not force a company to add an additional color to a label, which would significantly increase printing costs.

Rule 7 (16 CFR 307.7) Disclosures in Print Advertising

Section 307.7 of the proposed regulations describes the requirements for the warning statements in print advertising. Subsection (a) of § 307.7 first provides a non-exclusive list of the types of materials that are covered by the section: advertisements in newspapers, magazines, or other periodicals; point-of-sale promotional materials; non-point of sale promotional materials such as leaflets, pamphlets, coupons, direct mail circulars, or paperback book inserts; and poster and placards other than outdoor billboard advertising. Subsection (a) then reiterates the language of section (3)(b)(2)(A) of the Smokeless Tobacco Act requiring the warning statement in smokeless tobacco advertising to be "in a conspicuous and prominent location in the advertisement and in conspicuous and legible type in contrast with all other printed material in the advertisement." Subsection (a) states that the statements must be printed in all capitals in a circle and arrow format so that they will look like the prototypes printed in seciton (3)(2)(B) of the Smokeless Tobacco Act. Subsection (a) specifies that a prominent location in an advertisement is anywhere other than the margin, but not next to circular designs, with the exception of picture of the product. Subsection (a) also provides that the warning can not be made a part of the design in an advertisement (such as a picture of the package).

Subsection (b) of § 307.7 first describes the proportions of the circle and arrow to ensure that all the advertising warning statements will be displayed in the same configuration. Fractional measurements are used in subsection (b) to describe the proportions of the circle and arrow.

As written, subsection (b) requires the circle and arrow and the warning statement to be printed in a clearly visible color against a solid background. This means that the advertising warnings for smokeless tobacco products under the proposed regulations are transparent in that they are required to appear in outline, unlike the warnings in cigarette advertising, which are required to appear in black against a white background in a rectangle with a black rule.

Subsection (b) also contains a list that provides the size of the circle and arrow as well as the point size for the type of the warning in advertisements with twelve different area ranges. Under the proposed regulations, the warning in a fullpage advertisement in a magazine such as *Time* or *Newsweek* (which would have an area of about 88 square inches), for example, is deemed to be conspicuous under the proposed regulations if it is printed in ten-point type in a circle with an area of approximately 1.2 square inches. (The figure for the area does not include the area of the portion of the arrow that extends above the circle.)

The final substantive provision of subsection (b) of § 307.7 deals with the requirement for the placement and dimensions of a warning in multi-page advertisements. Under subseciton (b) an advertisement in a newspaper, magazine, or other periodical that appears on more than one page need not have more than one warning, but the size of the warning should be determined by the total area of the ad and it should appear on the page that contains most of the advertisement. Other print materials of more than a page in length (such as pamphlets and catalogues) also need not have more than one warning, but the size of the warning is determined by the page size.

Finally, subsection (b) contains a prototype advertising warning, as does section (3)(b)(2)(B) of the Smokeless Tobacco Act. The prototype was included to illustrate further the configuration for the advertising warnings required by the proposed regulations.

Rule 8 (16 CFR 307.8) Disclosures in Audio Visual and Audio Advertising

Section 3(f) of the Smokeless Tobacco Act imposes a ban, effective 6 months after the date of enactment, on all broadcast advertising of smokeless tobacco products on media subject to the jurisdiction of the Federal Communications Commission. For other video advertisements, § 307.8 of the proposed regulations requires the warning to be displayed in a circle and arrow format at the end of the ad in a manner that can be easily read by the viewer. Similarly, the required warning must be read at the end of the audio ad in a manner that can be readily understood by the listener. In addition, the required warning must be displayed and read at the end of an advertisement with both an audio and a visual component.

Rule 9 (16 CFR 307.9)/Rule 10 (16 CFR 307.10) Compliance Plans

Section 307.9 describes the requirements for the rotation, display, and distribution of warnings on smokeless tobacco packages. Subsection (a) first reiterates the substance of section (3)(c)(1) of the Smokeless Tobacco Act that requires the three warning statements to be randomly displayed during each year in as equal a number of times as possible in all parts of the United States in which the product is marketed. Nevertheless, subsection (a) permits variations of 4% or less during each year. Subsection (a) defines random distribution as meaning the absence of anything that would interfere with random distribution. Subsection (b) merely provides a non-exclusive list of the ways that plans may meet the labeling requirements of the Smokeless Tobacco Act, and subsection (c) requires the submission of sample labels as part of a company's compliance plan.

Section 307.10 describes the requirements for the rotation, display, and dissemination of warning statements in smokeless tobacco advertising. Subsection (a) first reiterates the substance in section (3)(c)(2) of the Smokeless Tobacco Act that requires smokeless tobacco companies to rotate the warnings every 4 months for each brand. Subsection (a) expressly provides that any plan may take into account practical constraints on the production and distribution of advertising. Subsection (b) merely provides a non-exclusive list of the ways that plans may satisfy the requirements of advertising under the Smokeless Tobacco Act, and subsection (c) requires the submission of samples of advertising as part of a company's compliance plan.

Section C—Invitation to Comment

Before adopting these proposed regulations as final, consideration will be given to any written comments timely submitted to the Secretary of the Commission. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission Regulations, on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, DC 20580.

Section D—Paperwork Reduction

Sections 307.9 and 307.10 of the proposed regulations contain "collections of information" as defined by 5 CFR § 1320.7(c). They have therefore been submitted to OMB for review under the Paperwork Reduction Act, 5 U.S.C. 3501–3520. These provisions, described more fully below, implement the requirements of the Smokeless Tobacco Act that requires manufacturers, packagers, and importers of smokeless tobacco products to submit plans for complying with the requirements for the display of warnings. The burden estimate for this requirement is 2,000 burden hours.

DATE: Comments only on the Request for OMB Review must be submitted on or before August 4, 1986.

ADDRESS: Send comments (on the Request for OMB Review only) to Mr. Don Arbuckle , FTC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of the Request may be obtained from Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

Section E—Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory analysis (5 U.S.C. 603, 604) are not applicable to this document because it is believed these regulations will not have a significant economic impact on a substantial number of small entities.

The Smokeless Tobacco Act directs the Commission to issue regulations not later than 180 days after the date of enactment concerning advertising and labeling formats and displays appropriate to convey the required warnings and other procedures to be followed by the affected companies. The proposed regulations have been written as creating safe harbors rather than imposing mandatory, inflexible requirements for compliance with the Smokeless Tobacco Act. One reason for adopting a flexibile approach is to avoid imposing unforeseen burdens on small companies. Any economic costs imposed on small entities are primarily statutorily imposed, and the proposed regulations, will impose few, if any, independent additional costs. However, to ensure that no substantial economic impact is being overlooked, public comment is requested on the effect of the proposed regulations on costs, profitability, competitiveness, and employment in small entities. Subsequent to the receipt of public comments, it will be decided whether the preparation of a final regulatory flexibility analysis is warranted.

In light of the above, it is certified under the provisions of section 3, Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposed regulations will not have a significant economic impact on a substantial number of small entities.

Section F—Effective Date

The provisions of the Smokeless Tobacco Act that require the display of health warnings in the labeling and advertising of smokeless tobacco products become effective February 27, 1987. An effective date for these regulations, which implement the display requirements, will be announced by the Commission when it publishes these regulations in final form.

Section G—Questions

The Commission is seeking comments on aspects of the proposed regulations. Without limiting the scope of issues it is seeking comment on, the Commission is particularly interested in receiving comments on the following questions.

Question 1. The proposed regulations prohibit the advertising (other than through the use of outdoor billboards) of smokeless tobacco products without the required warning statement.

Although a number of types of materials are exempted under § 307.4(b) of the proposed regulations, neither the Smokeless Tobacco Act nor the proposed regulations contain a definition of the term "advertisement." What problems, if any, would the absence of a definition of the term "advertisement" create for implementing the regulations or achieving the purposes of the legislation? If the term should be defined, how should it be defined?

Question 2. Section 307.3 defines the following terms: Act, Commission, regulation(s), commerce, United States, smokeless tobacco product, brand, package, label, billboard, manufacturer, packager, and importer. Should other terms be defined?

Question 3. Subsection (a) of § 307.6 of the proposed regulations requires the label warning statement to appear in a prominent place, which is on a part of the label that is likely to be seen. Subsection (a) then gives examples of places on a number of types of smokeless tobacco packages that will be deemed to be prominent and states that, absent special circumstances, the required warning shall not be considered to be prominent if it appears on the bottom of a package.

A. Are there other surfaces that should be deemed to be prominent for display of the warning than those designated in the examples in the proposed regulations?

B. Specifically in the case of a chewing tobacco pouch, the front of the package is deemed to be a prominent place for the warning. Is there any other surface of a pouch that should be deemed to be prominent for placement of the warning?

C. Subsection (b) of § 307.6 provides that a statement printed in two to four parallel lines parallel to the bottom of the package will be deemed to be conspicuous. The side of snuff cans is deemed to be prominent under the proposed regulations, but the front of chewing tobacco pouches is deemed to be prominent. Would a warning printed in one line on the front of a pouch be sufficiently conspicuous, given that the front of a pouch is more prominent than the side of a snuff can?

D. What are the increased costs to manufacturers of chewing tobacco to print the warning in two lines rather than in one line?

Question 4. Subsection (b) of § 307.6 requires the label statement to appear in a conspicuous format and in a conspicuous and legible type in contrast with all other printed material on a package. Subsection (b) also creates a "safe harbor" for label statements that are separated from other printed material on the package and printed in all capitals in Univers 47 or an equivalent type style and lists examples of type sizes that will be deemed to be conspicuous and legible in the case of four kinds of smokeless tobacco packages. In addition, subsection (b) provides that a label warning printed in the color used anywhere on the package that is most visible against the background on which the warning appears will be deemed to be sufficiently contrasting for purposes of the proposed regulations.

A. Is the label statement sufficiently noticeable to satisfy the requirement that the display of the warning be conspicuous?

B. Should the Commission deem to be sufficiently contrasting a label warning printed in a color that is clearly visible against the background rather than the color used anywhere on the package that is most visible against the background on which the warning appears? Would the most visible color requirement pose an undue burden in the case of a product with a trademark or logo that incorporates a small amount of a sharply contrasting color?

Question 5. Subsection (a) of § 307.7 states that the warning statement in print advertising must be printed in all capitals in a circle and arrow format so that they will look like the prototypes printed in section (3)(2)(B) of the Smokeless Tobacco Act. Subsection (b) of § 307.7 describes the proportions of the circle and arrow in terms of fractions to ensure that all the advertising warning statements will be displayed in the same configuration. What problems, if any, for implementing the regulations or achieving the purposes of the legislation are created by this method of describing the proportions of the circle and arrow?

Question 6. Subsection (b) of § 307.7 provides that a circle and arrow and warning statement printed in a clearly visible color against a solid background will be deemed to be in contrast with all other printed material in the advertisement. The advertising warnings for smokeless tobacco products under the proposed regulations may be transparent in that they may appear in outline, unlike the warnings in cigarette advertising, which must appear in black against a white background in a rectangle with a black rule. Subsection (b) contains a list that provides the size of the circle and arrow as well as the point size for the type of the warning that will be deemed to be conspicuous in advertisements with a range of twelve different areas.

A. Should the regulations provide that the warning will be deemed to be contrasting if it is printed in black against a white background and contained in a circle and arrow with a black rule?

B. Do the size specifications for the warnings in the twelve advertisement area ranges listed in the proposed regulations make the warning statement sufficiently noticeable to satisfy the requirement that the warning be conspicuous?

Question 7. Subsection (b) of § 307.4 of the proposed regulations prohibits the advertising (other than by outdoor billboards) of smokeless tobacco products without the required warning. The subsection, adopting preexisting requirements applicable to cigarette advertising, provides that this requirement is not applicable either to point-of-sale promotional materials such as shelf-talkers and in-store signs with display areas of 36 square inches or less or to utilitarian objects intended for personal use. Should the Commission limit the exceptions to items that carry only a brand name, logo, or other product identifier, but cover items that also carry a separate selling message?

Question 8. Consistent with the preexisting requirements governing cigarette advertising, subsection (b) of § 307.4 is silent with respect to promotional banners used at sponsored events, such as fishing tournaments and automobile races. Under the regulations, the question of whether a banner constitutes an advertisement that must carry a warning would be resolved on a case by case basis. Should the regulations explicitly address promotional banners, and, if so, how?

Question 9. Subsection (b) of § 307.7 contains a list that provides the size of the circle and arrow as well as the point size for the type of the warning in advertisements with areas in twelve different ranges. However, cigarette companies now comply with the display requirements of the Comprehensive Smoking Education Act by conforming the advertising warnings to acetates that were submitted to the Commission. The acetates are transparent sheets upon which the different size warnings are printed that may be laid over prototype ads to prepare advertisements in final form. Rather than listing the sizes of the circle and arrow as well as the type sizes for warnings in the advertisements with twelve different area ranges, should the regulations require or permit companies to comply by submitting acetates to the Commission as part of a compliance plan?

List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade practices.

Accordingly, it is proposed that Chapter I of 16 CFR be amended by adding a new Part 307 to read as follows:

PART 307—REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

Scope

Sec.

307.1 Scope of regulations in this part.
307.2 Preemption.

Definitions

307.3 Terms defined.

General Requirements

307.4 Prohibited acts and exemption procedure.
307.5 Language requirements.

Label Disclosures

307.6 Requirements for clear and conspicuous disclosure on the label.

Sec.

Advertising Disclosures

307.7 Requirements for clear and conspicuous disclosure in print advertising.
307.8 Requirements for clear and conspicuous disclosure in audovisual and audio advertising.

Plans

307.9 Rotation, display, and distribution of warning statements on smokeless tobacco packages.
307.10 Rotation, display, and dissemination of warning statements in smokeless tobacco advertising.

Authority: 15 U.S.C. 4401 *et seq.*

Scope

§ 307.1 Scope of regulations in this part.

The regulations in this part pertain to smokeless tobacco products, as hereinafter defined, in commerce, as "commerce" is defined in the Comprehensive Smokeless Tobacco Health Education Act of 1986, to be codified at 15 U.S.C. 4401. They establish requirements for the display of health warnings in the labels and advertising of smokeless tobacco products and the submission of plans specifying the method used to rotate, display, and distribute health warnings in the labeling and advertising of these products. The regulations in this part do not apply to smokeless tobacco products that are not sold or distributed in the United States, as United States is defined in the Act.

§ 307.2 Preemption.

The Comprehensive Smokeless Tobacco Health Education Act of 1986 is the law that requires the enactment of these regulations. Section 7 of this law provides that no statement, other than the three warning statements required by the Act, shall be required by any Federal, State, or local statute or regulation to be included on the package or in the advertisement (unless the advertisement is an outdoor billboard) of a smokeless tobacco product. The warning statements required by the Act are as follows:

WARNING: THIS PRODUCT MAY CAUSE MOUTH CANCER

WARNING: THIS PRODUCT MAY CAUSE GUM DISEASE AND TOOTH LOSS

WARNING: THIS PRODUCT IS NOT A SAFE ALTERNATIVE TO CIGARETTES

Definitions

§ 307.3 Terms defined.

As used in this part, unless the context otherwise specifically requires:

(a) "Act" means the Comprehensive Smokeless Tobacco Health Education

Act of 1986 (Pub. L. 99-252) and any amendments thereto.

(b) "Commission" means the Federal Trade Commission.

(c) "Regulation(s)" means regulations promulgated by the Commission pursuant to sections 3 and 5 of the Act.

(d) "Commerce" means—

(1) Commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof;

(2) Commerce between points in any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or

(3) Commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

(e) "United States," when used in a geographical sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, and installations of the Armed Forces.

(f) "Smokeless tobacco product" means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity, including snuff, chewing tobacco, and plug tobacco.

(g) "Brand" means smokeless tobacco products that bear a common identifying name or mark, regardless of whether the products are differentiated by type of product, size, shape, packaging, or other characteristic, and, in the case of generic or private label smokeless tobacco products, means all products produced by a single manufacturer or its affiliates or imported by a single importer or its affiliates.

(h) "Package" means any pack, can, box, jar, carton, pouch, container, or wrapping in which any smokeless tobacco product is offered for sale, sold, or otherwise distributed to consumers, but for purposes of these regulations "package" does not include—

(1) Any shipping container or wrapping used solely for transporting smokeless tobacco products in bulk or quantity to manufacturers, packagers, processors, wholesalers, or retailers unless the containers or wrapping is intended for use as a retail display or

(2) Any wrapping or container that bears no written, printed, or graphic matter.

(i) "Label" means any written, printed, or graphic matter affixed to or appearing on any smokeless tobacco product or any package containing a smokeless tobacco product with the exception of any revenue stamp affixed to a smokeless tobacco product.

(j) "Billboard" means any outdoor sign with an area of more than 150 square feet.

(k) Manufacturer" means any person who manufactures, produces, or processes any smokeless tobacco product.

(l) "Packager" means any person who puts any smokeless tobacco products into packages to be offered for sale, sold, or distributed to consumers.

(m) "Importer" means any person who puts any smokeless tobacco product that was not manufactured inside the United States into commerce to be offered for sale, sold, or distributed to consumers.

General Requirements

§ 307.4 Prohibited acts and exemption procedure.

(a) No manufacturer, packager, or importer of any smokeless tobacco product shall distribute, or cause to be distributed, in commerce any smokeless tobacco product in a package that does not comply with the labeling requirements of the Act and these regulations. Each smokeless tobacco product unless it has been exempted pursuant to a petition submitted as described in section 307.4(d) of this part, shall, upon being prepared for distribution in commerce for retail sale, but before it is distributed to be offered for retail sale, be labeled in accordance with the Act and regulations in this part. In the case of an importer, the label statements may be affixed in the country of origin or after importation into the United States, but shall be affixed before the smokeless tobacco product is removed from bond for sale or distribution. This section does not apply to any smokeless tobacco product that is manufactured, packaged, or imported in the United States for export from the United States, if the product is not in fact distributed in commerce for use in the United States.

(b) No manufacturer, packager, or importer of any smokeless tobacco product shall advertise or cause to be advertised (other than through the use of billboard advertising) with the United States any smokeless tobacco product unless the advertising bears the warning statement required by the Act and the regulations in this part. This requirement is not applicable to company and divisional names, when used as such, to signs on factories, plants, warehouses, and other facilities related to the manufacture or factory storage of smokeless tobacco, to corporate or financial reports, to communications to security holders and others who customarily receive copies of these communications, to employment advertising, to advertising in tobacco trade publications not circulated to consumers, or to promotional materials that are not publicly displayed or exposed to consumers, but are distributed to smokeless tobacco wholesalers, dealers, or merchants. In addition, this requirement does not apply to either point-of-sale promotional materials with a display area of 36 square inches or less or utilitarian objects for personal use, such as clothing, sporting goods, spittoons, towels, blankets, and furniture.

(c) No manufacturer, packager, or importer shall fail to submit a plan to the Commission which specifies the method that will be used to rotate, display, and distribute the statements required by the Act and regulations in this part. The Commission shall approve a plan if the plan provides for the rotation, display, and distribution of the statements in a manner that complies with the Act and these regulations. Authority to approve plans submitted by smokeless tobacco manufacturers, packagers, and importers has been delegated by the Commission to the Associate Director for Advertising Practices. Where significant issues not previously considered by the Commission are present, however, those plans will be referred by the Associate Director for Advertising Practices to the Commission in the first instance. This delegation is authorized by section 1(a) of the Reorganization Plan No. 4 of 1961 in order to enhance the efficiency and result in expedited treatment of these plans. Pursuant to section 1(b) of the Reorganization Plan, the Commission will retain the discretionary right to review the actions of the delegate. Any smokeless tobacco manufacturer, packager, or importer may within 30 days of the delegate's action file with the Secretary of the Commission a request for full Commission review of the action. If no review is sought by petition of the submitter of a plan or any intervenor or upon the Commission's own initiative within 30 days of the action, or if a review is sought and denied in this 30 day period, the delegate's action shall be deemed to be the action of the Commission.

(d) Regulations may be promulgated by the Commission granting exemptions relieving particular smokeless tobacco products from one or more of the

requirements of the regulations in this part to the extent that the Commission finds that because of the form of the package, quantity of the particular smokeless tobacco product, or for other good and sufficient reasons, full compliance is impracticable, unreasonable, or unnecessary for the adequate protection of consumers. Proceedings for the promulgation of exemptions may be commenced by the Commission upon its own initiative or pursuant to a petition filed with the Secretary by any interested person or group stating reasonable grounds for the proposed exemption.

(e) A manufacturer, packager, or importer of smokeless tobacco products shall be deemed to be in compliance with the Act and these regulations if it has taken reasonable steps to—

(1) Provide, by written contract or other clear instructions, for the rotation of the label statements required by the Act;

(2) Give clear instructions and, if possible, furnish materials (such as film negatives, acetates, or other facsimiles) for the production of smokeless tobacco packages and advertising that contain the required warning statements; and

(3) Prevent and correct mistakes, errors, or omissions that have come to its attention. Blurring or illegibility of the statements that occurs for reasons beyond the control of the manufacturer, packager, importer, or their agents shall not constitute a violation of these regulations.

However, in the event of the distribution of labels or the publication of advertisements that do not conform with the Act and these regulations, the burden of establishing that reasonable steps have been taken (including fulfilling the conditions described in paragraph (e)(1) through (3) of this section) to comply shall rest with the manufacturer, packager, or importer of smokeless tobacco.

§ 307.5 Language requirements.

The warning statement on the label of a smokeless tobacco product required by the Act and these regulations shall be set out in the English language. If the label of a smokeless tobacco product contains a required warning in a language other than English, the required warning must also appear in English. In the case of an advertisement for a smokeless tobacco product in a newspaper, magazine, periodical, or other publication that is not in English, the warning statement shall appear in the predominant language of the publication in which the advertisement appears. In the case of any other advertisement, the warning statement shall appear in the same language as that principally used in the advertisement.

Label Disclosures

§ 307.6 Requirements for clear and conspicuous disclosure on the label.

(a) In the case of the label of a smokeless tobacco package, the warning statement required by the Act and these regulations must be in a conspicuous and prominent place on the package. A conspicuous and prominent place is a part of a label that is likely to be displayed, presented, shown, or examined. For example, in the case of the following types of packages, the following places shall be deemed to be conspicuous and prominent.

Cylindrical can	Side of the package.
Pouch	Front of the package.
Rectangular box of snuff, plug of chewing tobacco, or carton used to dispense individual cans of snuff or pouches or plugs of chewing tobacco	Either side of the package (provided that the side panel used does not bear any written or graphic matter other than the background color of the side panel and reasonable extensions of graphic matter from other panels).

However, in the case of any package of smokeless tobacco, absent special circumstances, the required warning statement shall not be deemed to be in a conspicuous and prominent place if it appears on the bottom (that is, the underside) of the package. However, in the case of a rectangular package that is wrapped in a continuous sheet of foil or plastic with randomly appearing label information, the required warning shall be deemed to be in a conspicuous and prominent place if it appears at least once in its entirely on any part of the package that is not crimped or seamed.

(b) The label statement required by the Act and these regulations must also be in a conspicuous format and in a conspicuous and legible type in contrast with all other printed material on the package. The required warning statement shall be deemed to be in a conspicuous format if it appears in two to four lines that are parallel to each other as well as to the base of the package. However, in the case of a cylindrical package with a diameter of 1 and ¾ inches or less the required warning statement need not be parallel with the base of the package to be deemed to be in a conspicuous format. In the case of all packages the required warning statement shall be deemed to be in a conspicuous format if it is separated in every direction from other written or graphic matter on the label by the equivalent of at least twice the point size of the type in which the warning is printed or if it is the only written matter on the surface of the package. The required warning statement shall be deemed to be in a conspicuous and legible type if it appears in all capitals in Univers 47 normal or an equivalent type style. For example, in the case of the following types of packages with the specified capacity, the following type sizes shall be deemed to be conspicuous and legible.

1 and ⅛ ounce snuff can	Seven-point type with seven point character width and leading.
2 to 4 ounce pouch or plug of chewing tobacco	Eight-point type with eight-point character width and leading.
Can roll consisting of cans wrapped for sale as a single unit.	Twelve-point type with twelve-point character width and leading (provided that, if the warning statements on the individual cans are completely visible no warning statement is required on the outer wrapping).
Carton used to dispense individual cans of snuff or pouches or plugs of chewing tobacco	Twelve-point type with twelve-point character width and leading.

The required warning statement shall be deemed to be in contrast with all other printed material on the package if it is printed in the color (including black and white) used anywhere on the package that is most visible against the background on which the warning appears. This does not preclude the possibility that two or more colors may be equally visible against the background.

Advertising Disclosures

§ 307.7 Requirements for clear and conspicuous disclosure in print advertising.

(a) In the case of print advertisements for smokeless tobacco, including but not limited to, advertisements in newspapers, magazines, or other periodicals; point-of-sale promotional materials; non-profit of sale promotional materials such as leaflets, pamphlets, coupons, direct mail circulars, or paperback book inserts; and posters and placards (other than outdoor billboard advertising), the warning statement required by the Act and these regulations must be in a conspicuous and prominent location, in conspicuous and legible type in contrast with all other printed material in the advertisement and must appear in capital letters in a circle and arrow format. A conspicuous and prominent location is anywhere within the trim area other than the margin in the case of an advertisement in a newspaper, magazine, or other periodical, and in all cases is not immediately next to other written matter or to any circular

designs, elements, or similar geometric forms (other than a picture of a smokeless tobacco package such as a cylindrical snuff can). A circle and arrow will not be deemed to be conspicuous and prominent if it is included as an integral part of a specific design or illustration, such as a picture of the package, in the advertisement.

(b) The advertising warning statements required by the Act and these regulations must be in conspicuous and legible type in contrast with all other printed material in the advertisement and must appear in all capital letters in a circle and arrow format. The proportions of the circle and arrow shall be deemed to be conspicuous if they are such that the base of the arrow is equal to ¾ of the diameter of the circle; the neck of the arrow is equal to ⅛ of the diameter of the circle; the widest part of the head of the arrow is equal to the diameter of the circle; and the tip of the arrow is centered at a point equal to ¾ of the diameter from the lowest point of the circle. The statements shall be deemed to be conspicuous if they are parallel to the foot of the advertisement and centered in the circle, and the word "WARNING" followed by a colon appears in the neck of the arrow. The required warning statement shall be deemed to be in a conspicuous and legible type if it is printed in all capitals in Univers 47 normal or an equivalent type style. The rule that forms the circle and arrow and the required statement shall be deemed to be in contrast with all other printed material in the advertisement if they are printed in a color (including black and white) that is clearly visible against the background upon which the statement appears and the background is a uniform color. A warning statement in a circle and arrow with the following minimum dimensions shall be deemed to be conspicuous in relation to the size of the advertisement.

Display area of up to 15 square inches.	Five-point type and character width with a 1 point rule in a circle with a diameter of ½ inch.
Display area of 15 to 65 square inches.	Eight-point type and character width with a 1 point rule in a circle with a diameter of 1 inch.
Display area of 65 to 180 square inches.	Ten-point type and character width with a 1 and ½ point rule in a circle with a diameter of 1 and ¼ inches.
Display area of 180 to 260 square inches.	Twelve-point type and character width with a 2 point rule in a circle with a diameter of 1 and ½ inches.
Display area of 360 to 470 square inches.	Fourteen-point type and character width with a 2 point rule in a circle with a diameter of 1 and ¾ inches.
Display area of 470 to 720 square inches.	Sixteen-point type and character width with a 2 point rule in a circle with a diameter of 2 inches.
Display area of 5 to 10 square feet.	Eighteen-point type and character width with a 3 point rule in a circle with a diameter of 2 and ¼ inches.
Display area of 10 to 20 square feet.	Twenty-point type and character width with a 3 point rule in a circle with a diameter of 2 and ½ inches.
Display area of 20 to 30 square feet.	Twenty-four point type and character width with a 3 point rule in a circle with a diameter of 3 inches.
Display area of 30 to 40 square feet.	Twenty-eight point type and character width with a 3 point rule in a circle with a diameter of 3 and ½ inches.
Display area of 40 to 80 square feet.	Forty-eight point type and character width with a 6 point rule in a circle with a diameter of 6 inches.
Display area of over 80 square feet.	Sixty-point type and character width with a 6 point rule in a circle with a diameter of 1 foot.

An advertisement in a newspaper, magazine, or other periodical that occupies more than one page shall not be required to have more than one warning statement, but the dimensions of the circle and arrow shall be determined by the aggregate area of the entire advertisement, and the warning statement shall appear on the page that contains most of the advertisement. Point of sale and nonpoint of sale promotional materials of more than one page in length shall not be required to have more than one warning statement, and the dimensions of the circle and arrow shall be determined by the size of the advertisement on the page on which most of the advertisement appears. Warning statements in circles and arrows that meet the specifications of this section and look substantially like the following example shall be deemed to be in a conspicuous format and in conspicuous and legible type for an advertisement with an area of 15 to 65 square inches:



§ 307.8 Requirements for clear and conspicuous disclosure in audiovisual and audio advertising.

In the case of advertisements for smokeless tobacco on videotapes, casettes, or discs; promotional films or filmstrips; and promotional audiotapes or other types of sound recordings, the warning statement required by the Act and these regulations must be conspicuous and prominent. If the advertisement has a visual component, the warning statement shall be deemed to be conspicuous and prominent if it is superimposed on the screen in a circle and arrow format at the end of the advertisement for a length of time and in graphics so that it is easily legible by the typical viewer. If the advertisement has an audio component, the warning statement shall be deemed to be conspicuous and prominent if it is announced at the end of the advertisement in a manner that is clearly audible and understandable to the typical listener. If an advertisement has both a visual and an audio component, the warning statement shall be deemed to be conspicuous and prominent if it is superimposed on the screen in a circle and arrow format and announced simultaneously at the end of the advertisement in a manner that is easily legible and clearly audible and understandable to the typical viewer.

Plans

§ 307.9 Rotation, display, and distribution of warning statements on smokeless tobacco packages.

(a) In the case of the package of a smokeless tobacco product, each of the three warning statements required by the Act must—

(1) Be displayed randomly by each manufacturer, packager, or importer of a smokeless tobacco product in each 12-month period in as equal a number of times as possible on each brand of the product and

(2) Be randomly distributed in all parts of the United States in which the product is marketed.

An "equal number of times as possible" does not require mathematical precision and variations of 4% or less in a 12-month period are permissible. Random distribution means that there is nothing in the production or distribution process of a smokeless tobacco product that would prevent the three warning statements on the package from being distributed evenly in all parts of the United States where the product is marketed. Moreover, nothing in this part requires the adoption of any ordering practice for smokeless tobacco packages or labels.

(b) Each manufacturer, packager, or importer of a smokeless tobacco product must submit a plan to the Commission or its designated representative that ensures that the three warning statements are displayed on the package

of a smokeless tobacco product as required by the Act and these regulations. A plan must be sufficiently detailed to ensure that the warning statements appear on the package as required by the Act and these regulations, although these requirements may be satisfied in a number of ways. For example, a plan may satisfy the equal display requirement by providing for the engraving or preparation of cylinders, plates, or equivalent production materials in a manner that results in the simultaneously printing of the three required warnings in as near an equal number of times as possible under the circumstances. Alternatively, a plan may satisfy the equal display requirement by providing that stickers bearing the three required warnings be printed in equal numbers and affixed randomly to packages of the product. Alternatively, plan may satisfy the equal display requirement by providing for the preparation of separate cylinders, plates, and equivalent production materials and requiring that they be changed at fixed intervals in a manner that results in the display of the three required warnings in as near an equal number of times as possible under the circumstances during a 1-year period. In any event, nothing in these regulations requires the use of more than one warning statement of the label of any brand during a given 4-month period. A plan may satisfy the random distribution requirement by describing a distribution process that would ensure, or not interfere with, the random distribution of a smokeless tobacco product in all parts of the United States in which the product is marketed.

(c) A plan for the rotation, display, and distribution of warning statements on smokeless tobacco packages shall include representative samples of labels with each of the three warning statements required by the Act and these regulations. This provision does not require submission of a label with each of the required warning statements for every brand marketed by a manufacturer, packager, or importer of smokeless tobacco products and shall be deemed to be satisfied by submission of labels for different types of smokeless tobacco products, such as moist snuff, scotch snuff, and loose-leaf and plug chewing tobacco, and a range of package sizes for each type of product. The package may be, but is not required to be, submitted along with the label, except in the case of any warning that is not printed directly on the label, which must be affixed to the package.

§ 307.10 Rotation, display, and dissemination of warning statements in smokeless tobacco advertising.

(a) In the case of advertising for a smokeless tobacco product, each of the three warning statements required by the Act must be rotated every 4 months by each manufacturer, packager, or importer of a smokeless tobacco product in an alternating sequence in the advertisement for each brand of the product. Any rotational system, however, may take into account practical constraints on the production and distribution of advertising.

(b) Each manufacturer, packager, or importer of a smokeless tobacco product must submit a plan to the Commission or its designated representative that ensures that the three warning statements are rotated every 4 months in alternating sequence. There may be more than one system, however, that complies with the Act and these regulations. For example, a plan may require all brands to display the same warning during each 4-month period or require each brand to display a different warning during a given 4-month period. A plan shall describe the method of rotation and shall include a list of the designated warnings for each 4-month period during the first year for each brand. A plan shall describe the method that will be used to ensure the proper rotation in different advertising media in sufficient detail to ensure compliance with the Act and these regulations, although a number of different methods may satisfy these requirements. For example, a satisfactory plan for advertising in newspapers, magazines, or other periodicals could provide for rotation according to either the cover or closing date of the publication. A satisfactory plan for posters and placards, other than billboard advertising, could provide for rotation according to either the scheduled or the actual appearance of the advertising. A satisfactory plan for point-of-sale and non-point of sale promotional materials such as leaflets, pamphlets, coupons, direct mail circulars, paperback book inserts, or non-print items could provide for rotation according to the time that the material is scheduled to be disseminated or the order date for the material. In any event, nothing in these regulations prohibits the use of any point-of-sale or non-point of sale material for a period longer than 4 months.

(c) A plan for the rotation, display, and dissemination of warning statements in smokeless tobacco advertising shall include a representative sample of each of the three warning statements required by the Act and these regulations. This provision does not require the submission of all advertising for each brand marketed by a manufacturer, packager, or importer of smokeless tobacco products and shall be deemed to be satisfied by submission of actual examples of different types of advertising materials for various brands, prototypes of actual advertising materials, the warning statement as it would appear in different sizes of advertisements, or acetates or other facsimiles for the warning statement as it would appear in different sizes of advertisements.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-14807 Filed 7-2-86; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 200

[Notice No. 597]

Rules of Practice in Permit Proceedings

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF proposes to amend the regulations for conducting license and permit proceedings. The amendments propose a more efficient use of agency and administrative law judge time in uncontested proceedings. The amendments also require that an appeal to the Director be made prior to court review of agency action.

DATE: Comments should be received on or before August 4, 1986.

ADDRESS: Send comments to Chief, Procedures Branch Bureau of Alcohol Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385.

Copies of written comments received in response to this notice will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Rm 4406, Ariel Rios Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC

FOR FURTHER INFORMATION CONTACT:

Bradley A. Buckles, Office of Chief Counsel, Bureau of Alcohol, Tobacco

and Firearms, Washington, DC 20226, (202) 566-7774.

SUPPLEMENTARY INFORMATION: Under current regulations, all citations for suspension, revocation or annulment of permits held by the regulated industry are referred to an administrative law judge (ALJ) for a hearing. A hearing is held even if the proceeding is uncontested and the permit holder or applicant does not appear. The proposed regulations provide a mechanism to expedite treatment of uncontested proceedings by permitting the Regional Director (Compliance) to issue orders in uncontested cases. Contested procedings would continue to be held before an ALJ.

Current regulations also permit, but do not require, an appeal to be taken to the Director from an initial decision of an ALJ or Regional Director (Compliance). In the interests of administrative consistency and judicial economy, the proposed regulations would make an appeal to the Director a prerequiste to court review of the agency's action.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significnat increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments concerning this proposed rule from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future AFT action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request in writing to the Director within the 30-day comment period. The Director, however, reserves the right to determine, in the light of all circumstances, whether a public hearing should be held.

Drafting Information

The principal author of this document is Bradley A. Buckles, Office of Chief Counsel, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 200

Administrative practice and procedure, Alcohol and alcoholic beverages, Tobacco.

Authority

27 CFR Part 200—Rules of Practice in Permit Proceedings is proposed to be amended as follows:

Par. 1. The authority citation for Part 200 is revised to read as follows:

Authority: 26 U.S.C. 7805, 27 U.S.C. 204.

Par. 2 The table of sections for 27 CFR Part 200 is amended to reflect the addition of § 200.107a, the change in the title of §§ 200.63, 200.71 and 200.118 and the deletion of § 200.119 to read as follows:

Sec.

* * * * *

200.63 Suspension, revocation, or annulment proceedings.

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200.71 Adjudication based upon written submission.

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200.107a Regional director's decision.

* * * * *

200.117 * * *

200.118 Court review.

Subpart J—Miscellaneous.

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Par. 3. Section 200.5 is amended to revise the definition of initial decision to read as follows:

§ 200.5 Meaning of terms.

* * * * *

Initial decision. The decision of the Regional Director (Compliance) or administrative law judge in a proceeding on the suspension, revocation or annulment of a permit.

* * * * *

Par. 4. Section 200.36 is amended to permit the Regional Director (Compliance) to dismiss proceedings when a satisfactory settlement is reached between the parties. As revised, § 200.36 reads as follows:

§ 200.36 General.

In all proceedings in which a permittee is cited to show cause why the permit should not be suspended, revoked or annulled, the permittee shall be afforded opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment, where time, the nature of the proceeding, and the public interest permit. Such submittals should be made to the Regional Director (Compliance), but may be made through the attorney for the Government. Where necessary, the date of the hearing may be postponed, pending consideration of such proposals, when they are made in good faith and not for the purpose of delay. If proposals of settlement are submitted, and they are considered unsatisfactory, the Regional Director (Compliance) may reject the proposals and may, either directly or through the attorney for the Government, inform the permittee of any conditions on which the alleged violations may be settled. If the proposals of settlement are considered satisfactory to the Regional Director (Compliance), the permittee shall be notified thereof and the proceeding shall be dismissed, unless such proposals of settlement include a monetary offer in compromise considered satisfactory to the Regional Director (Complaince), in which event

the proceeding shall be held in abeyance pending final action on such monetary offer in compromise.

Par. 5. Section 200.37 is amended by eliminating the requirement of a hearing in the last sentence. As revised, the last sentence of § 200.37 reads as follows:

§ 200.37 Notice of contemplated action.

* * * Where informal settlement is not reached promptly because of inaction of the permittee or proposals are made for the purpose of delay, a citation shall be issued in accordance with §§ 200.55 and 200.56.

Par. 6. Section 200.55 is amended to require a request for a hearing before a hearing will be scheduled, as revised § 200.55 reads as follows:

§ 200.55 Content.

(a) Citation for the suspension, revocation or annulment of a permit shall be issued by the Regional Director (Complaince) and shall set forth—

(1) The sections of law and regulations relied upon for authority and jurisdiction,

(2) In separate paragraphs, the matters of fact constituting the violations specified, dates, places, section of law and regulations violated, and

(3) The right to request within 15 days a hearing before an administrative law judge.

(b) Citations for the disapproval of an application for a permit shall set forth—

(1) The sections of law and regulations relied upon for authority and jurisdiction,

(2) In separate paragraphs, the matters of fact and law relied upon for the contemplated disapproval of the application, and

(3) That the application will be disapproved unless a hearing is requested within 15 days.

§ 200.56 [Amended]

Par. 7. Section 200.56(a) is amended by replacing the words "Form 1430-A" with the words "Form 5000.6." Section 200.56(b) is amended by replacing the words "Form 1430-C" with the words "Form 5000.17."

Par. 8. Section 200.57 is amended to reflect the optional nature of the hearing. As revised, § 200.57 reads as follows:

§ 200.57 Execution and disposition.

Forms 5000.6 and 5000.17 shall be executed in quintuplicate. A signed duplicated original shall be served on the permittee. If a hearing is requested, one copy shall be sent to the administrative law judge designated to conduct the hearing. The original copy containing the certificate of service shall be placed in the official record of the proceeding; and the remaining copies shall be retained for the office of the Regional Director (Compliance).

Par. 9. Section 200.60 is amended to provide procedures for requesting a hearing before an administrative law judge in suspension, revocation, or annulment cases. As revised, § 200.60 reads, as follows:

§ 200.60 Suspension, revocation, or annulment proceedings.

(a) If a hearing is desired, the respondent shall file a request, in writing, with the Regional Director (Compliance) within 15 days after receipt of the citation or within such time as the Regional Director (Compliance) may allow.

(b) Where a respondent requests a hearing, the Regional Director (Compliance) shall forward a copy of the request together with a copy of the citation to the Director for the assignment of an administrative law judge.

(c) After the Director notifies the Regional Director (Compliance) of the assignment of the administrative law judge, the Regional Director (Compliance) shall serve a notice of designation of the administrative law judge on the respondent.

(d) The administrative law judge shall set a time and place for a hearing and shall serve notice thereof on the parties at least 10 days in advance of the hearing date.

Par. 10. § 200.63 is revised to provide that in the case of the failure to request a hearing in a suspension, revocation or annulment case the Regional Director (Compliance) shall make the initial decision. As revised, § 200.63 reads as follows:

§ 200.63 Suspension, revocation, or annulment proceedings.

If the respondent does not request a hearing within the time specified in § 200.60, and does not file an answer as required in § 200.64, the Regional Director (Compliance) shall make the initial decision in the case in accordance with § 200.79.

Par. 11. Section 200.64 is amended to reflect the optional nature of a hearing and to require an answer in all contested proceedings. As revised, § 200.64 reads as follows:

§ 200.64 When required.

(a) Where the respondent requests a hearing in accordance with § 200.60, a written answer shall be filed with the administrative law judge and served on the Regional Director (Compliance) within 15 days after service of the designation of the administrative law judge.

(b) Where no hearing is requested, the respondent shall file a written answer with the Regional Director (Compliance) within 15 days after service of a citation.

(c) An answer shall contain a concise statement of the facts that constitute his grounds for defense. The hearing may be limited to the issues contained in the citation and the answer. The administrative law judge, or Regional Director (Compliance) as the case may be, may, as a matter of discretion, waive any requirement of this section.

(d) Ansers need not be filed in application proceedings.

Par. 12. Section 200.65 is amended to eliminate the reference to the administrative law judge. As revised, § 200.65 reads as follows:

§ 200.65 Answer admitting facts.

If the respondent desires to waive the hearing on the allegations of fact set forth in the order to show cause, and does not contest the facts, the answer may consist of a statement that the respondent admits all material allegations of fact charged in the citation to be true. The Regional Director (Compliance) shall thereupon base the decision on the citation and such answer although such an answer shall not affect the respondent's right to submit proposed findings of fact and conclusions of law, or the right to appeal.

Par. 13. Section 200.71 is amended by repealing the existng section as unnecessary, and adding a new procedure for adjudicating citations without a hearing. As revised, § 200.71 reads as follows:

§ 200.71 Adjudication based upon written submissions.

The respondent may waive the hearing before the administrative law judge, and stipulate that the matter will be adjudicated by the Regional Director (Compliance) based upon written submissions. Written submissions may include stipulations of law or facts, proposed findings of fact and conclusions of law, briefs, or any other documentary material. The pleadings together with the written submissions of both the attorneys for the Government and the respondent shall constitute the record on which the initial decision shall be based. The election to contest the citation without a hearing under this section does not affect the respondent's right to appeal.

Par. 14. Section 200.72 is amended by amending the second sentence to remove the reference to § 200.71 and by

removing the last sentence. As revised, § 200.72 reads as follows:

§ 200.72 Before citation.

If a respondent surrenders the permit before citation, the Regional Director (Compliance) may accept the surrender. But if the evidence, in the opinion of the Regional Director (Compliance), warrants citation for suspension, revocation or annulment, the surrender shall be refused and the Regional Director (Compliance) shall issue the citation.

Par. 15. Section 200.73 is amended to allow the Regional Director (Compliance) to move to dismiss the proceeding as moot and by removing the last sentence. As revised, § 200.73 reads as follows:

§ 200.73 After citation.

If a respondent surrenders the permit after citation and prior to an initial decision, the Regional Director (Compliance) may accept the surrender of the permit and dismiss the proceeding as moot. If, however, in the opinion of the Regional Director (Compliance), the evidence is such as to warrant suspension, revocation or annulment, as the case may be, the surrender of the permit shall be refused, and the proceeding shall continue.

Par. 16. Section 200.77 is amended to reflect the optional nature of the hearing. As revised, § 200.77 reads as follows:

§ 200.77 General.

If a hearing is requested, it shall be held at the time and place stated in the notice of hearing unless otherwise ordered by the administrative law judge.

Par. 17. Section 200.79 is amended to reflect the alternative decisionmaking options available to the respondent. As revised, § 200.79 reads as follows:

§ 200.79 Suspension, revocation, or annulment.

(a) The administrative law judge who presides at the hearing in proceedings for the suspension, revocation and annulment of permits shall make the initial decision.

(b) If no hearing is requested, the Regional Director (Compliance) shall make the initial decision.

Par. 18. A new § 200.107a is added describing the contents of an initial decision rendered by the Regional Director (Compliance) to read as follows:

§ 200.107a Regional director's decision.

(a) When the Regional Director (Compliance) issues an initial decision in accordance with § 200.79, the decision shall become a part of the record. The decision shall consist of—

(1) A brief statement of the issues involved in the proceedings;

(2) The regional director's findings and conclusions, as well as the reasons therefor; and

(3) The regional director's determination on the record.

Par. 19. Section 200.108 is amended by designating the current section as paragraph (a) and adding a new paragraph (b) covering cases where the Regional Diretor (Compliance) renders the initial decision to read as follows:

§ 200.108 Suspension, revocation, or annulment proceedings.

(a) * * *

(b) In a case where the initial decision is made by the Regional Director (Compliance) in accordance with § 200.79, the regional director will also issue an order suspending, revoking or annulling the permit (on Form 5000.5), or dismissing the proceedings in accordance with his initial decision. A signed duplicated original of the decision and order of the Regional Director (Compliance) shall be served upon the respondent and the original copy placed in the official record of the proceeding. In all proceedings in which a suspension is imposed, the regional director's order shall state the time when the suspension period set forth in the initial decision shall commence and terminate.

Par. 20. Section 200.110 is amended to clarify that the regional director issuing a permit will have jurisdiction to respond to violations even if they occur outside the region. As revised, § 200.110 reads as follows:

§ 200.110 Proceedings involving violations not within region of issuance of permit.

In the event violations occurred at a place not within the region of issuance of a permit, the Regional Director (Compliance) of the region of issuance will take jurisdiction over any proceeding including issuing the citation, and taking appropriation action in accordance with § 200.108.

Par. 21. Section 200.115 is amended to require an appeal to the Director prior to seeking court review. As revised, § 200.115 reads as follows:

§ 200.115 Appeal on petition to the Director.

An appeal to the Director is required prior to application to the Federal courts for review. An appeal may be taken by the applicant or respondent or by the Regional Director (Compliance). Such appeal shall be taken by filing a petition for review on appeal with the Director within 15 days of the service of the order disapproving an application for a permit or the initial decision suspending, revoking or annulling a permit. The petition must set forth facts tending to show—

(a) Action of an arbitrary nature,

(b) Action without reasonable warrant in fact, or

(c) Action contrary to law and regulations. A copy of the petition shall be filed with the Regional Director (Compliance) or served on the respondent or applicant as the case may be. In the event of such appeal, the Regional Director (Compliance) shall immediately certify and forward the complete original record, by certified mail, to the Director, for his consideration and review.

Par. 22. Section 200.119 is removed and its contents are combined with § 200.118 to conform with current court practices. As revised, § 200.118 reads as follows:

§ 200.118 Court review.

If an applicant or respondent files an appeal in Federal court of the Director's decision, the Director, upon notification that an appeal has been taken, shall prepare the record for submission to the court in accordance with the applicable court rules.

§ 200.126 [Amended]

Par. 23. Section 200.126 is amended by replacing the words "Form 1644" with the words "Form 5600.10" and by replacing the words "Form 1645" with the words "For 5600.11."

Signed: June 6, 1986.

Approved: June 19, 1986.

Stephen E. Higgins,

Director.

Michael H. Lane,

Acting Assistant Secretary (Enforcement).

[FR Doc. 86-14935 Filed 7-2-86; 8:45 am]

BILLING CODE 4810-31-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Occupational Safety and Health Review Commission recently proposed a thorough revision of its procedural rules for adjudicative proceedings before the Commission and its Administrative Law Judges. 51 FR

23184–23206, June 25, 1986. The Commission invited public comment on or before July 10, 1986. More recently, representatives of the U.S. Department of Labor and of various trade associations have requested the Commission to extend the comment period so that they may obtain the views of their field personnel or their constituent members, respectively. In response, the Commission has agreed to extend the comment period by fifteen days. This document extends the comment period.

DATE: Comments must be submitted on or before July 25, 1986.

ADDRESS: Comments may be mailed to:

Earl R. Ohman, Jr., General Counsel, Occupational Safety and Health Review Commission, Room 402–A, 1825 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., at (202) 634–4015.

List of Subjects in 29 CFR Part 2200

Hearing and appeal procedures, Administrative practice and procedure, Ex parte communications, Lawyers.

Dated: June 30, 1986.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 86–15093 Filed 7–2–86; 8:45 am]

BILLING CODE 7600-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Explosives and Blasting; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice to extend period for public comment on proposed rule.

SUMMARY: Due to requests from the public, the Mine Safety and Health Administration (MSHA) is extending the period for public comment on the Agency's proposed rule for safety standards for explosives and blasting.

DATES: Written comments on the proposed rule must be received on or before July 31, 1986.

ADDRESSES: All comments should be sent to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Phone: (703) 235–1910.

SUPPLEMENTARY INFORMATION: On May 9, 1986, MSHA published proposed revisions to its existing safety standards in 30 CFR Part 75 for explosives and blasting in underground coal mines (51 FR 17284). The comment period was scheduled to end on July 8, 1986. Due to requests from the public, MSHA is extending the time for commenting on this proposed rule. The comment period is extended to July 31, 1986. All interested members of the mining community are encouraged to submit comments on or before that date.

Dated: June 26, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86–15070 Filed 7–2–86; 8:45 am]

BILLING CODE 4510-43-M

30 CFR Part 75

Safety Standards for Electricity in Underground Coal Mines; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice to extend the period for public comment on the preproposal draft.

SUMMARY: Due to requests from the public, the Mine Safety and Health Administration (MSHA) is extending the comment period on its preproposal draft regarding electrical standards for underground coal mines in 30 CFR Part 75.

DATE: Written comments on the preproposal draft must be received on or before August 15, 1986.

ADDRESS: All comments should be sent to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Phone: (703) 235–1910.

SUPPLEMENTARY INFORMATION: On May 23, 1986, MSHA announced the availability of a preproposal draft (51 FR 18899) to revise existing electrical standards for underground coal mines. The comment period was scheduled to end on July 22, 1986. Due to requests from the public, MSHA is extending the comment period to August 15, 1986. All interested members of the mining community are encouraged to submit comments on or before that date.

Dated: June 30, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86–15071 Filed 7–2–86; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Permanent State Regulatory Program of Indiana

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a proposed program amendment to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendment submitted by the State on May 29, 1986, would amend the Indiana regulations concerning permit fees.

This document sets forth the times and locations that the Indiana program and proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATE: Written comments relating to Indiana's proposed modification of its program not received on or before 4:00 p.m. August 4, 1986, will not necessarily be considered.

If requested, a public hearing will be held on July 28, 1986, beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 296–2600.

If a public hearing is held, its location will be at: OSMRE Indianapolis Field Office, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio

Street, Indianapolis, Indiana; Telephone (317) 269–2600.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 45204; Telephone: (317) 296–2600.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Indiana program, the proposed amendment, and a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSMRE offices and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive free of charge, one single copy of the proposed amendment by contacting the Indianapolis Field Office listed below.

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 "L" Street, NW., Washington, DC 20240.

Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana.

Indianapolis Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recomendations. Comments not received by August 4, 1986 or received at locations other than the OSMRE Indianapolis, Indiana Field Office, will not not necessarily be considered.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business July 23, 1986. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE office listed in **"ADDRESSES"** by contracting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Discussion of the Proposed Amendment

Information regarding the general background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 16, 1982 **Federal Register** (47 FR 32071–32108).

On May 29, 1986, the Indiana Department of Natural Resources submitted to OSM pursuant to 30 CFR 732.17, a proposed State program amendment for approval. The amendment would modify regulations at 310 IAC 12–3–8 to require that permit applications be accompanied by fees of $100 per application filed, and $100 for each acre or fraction thereof described in the application and for which fees have not been proviously paid.

Pursuant to 30 CFR 732.15 and 732.17, the Director requests public comment on the adequacy of the above modifications. If the Director determines that the proposed modifications are in accordance with SMCRA and no less efective than the Federal regulation, the amendment will be incorporated as part of the approved Indiana program.

Procedural Matters

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

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE and exemption for sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

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

List of Subjects in 30 CFR Part 914

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

Dated: June 26, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

[FR Doc. 86–15081 Filed 7–2–86; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 914

Permanent State Regulatory Program of Indiana

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of proposed program amendments to the Indiana Permanent Regulatory Program (hereinafter referred to as the Indiana program) received by OSMRE pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposed amendments submitted by the State on June 11, 1986, consist of Senate Enrolled Act No. 41, amendments to the Indiana Surface Mining Law, and House Enrolled Act No. 1339, the new State Administrative Adjudication Act.

This document sets forth the times and locations that the Indiana program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and information pertinent to the public hearing.

DATE: Written comments relating to Indiana's proposed modification of its program not received on or before 4:00 p.m. August 4, 1986, will not necessarily be considered.

If requested, a public hearing will be held on July 28, 1986, beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 46204. Telephone: (317) 269–2600.

If a public hearing is held, its location will be at: OSMRE Indianapolis Field Office, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana; Telephone: (317) 269–2600.

FOR FURTHER INFORMATION CONTACT: Mr. Richard D. Rieke, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana 45204; Telephone: (317) 269–2600.

SUPPLEMENTARY INFORMATION: .

I. Public Comment Procedures

Availability of Copies.

Copies of the Indiana program, the proposed amendment, and a listing of any scheduled public meeting and all written comments received in response to this notice will be available for review at the OSMRE office and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting the Indianapolis Field Office listed below.

Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1100 L Street, NW., Washington, DC 20240.

Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, Room 522, 46 East Ohio Street, Indianapolis, Indiana.

Indianapolis Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments not received by August 4, 1986 or received at locations other than the OSMRE Indianapolis, Indiana Field Office, will not necessarily be considered.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business July 23, 1986. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the OSMRE Office listed in **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Discussion of the Proposed Amendment

Information regarding the General background on the Indiana State Program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 **Federal Register** (47 FR 32071–32108).

On June 11, 1986, the Indiana Department of Natural Resources submitted to OSMRE pursuant to 30 CFR 732.17, proposed State program amendments for approval. The amendments are contained in Senate Enrolled Act No. 41, which amends the Indiana Surface Mining Law at IC 13–4.1, and House Enrolled Act No. 1339, the New State Administrative Adjudication Act at IC 4–21.5.

Senate Enrolled Act No. 41 is scheduled to take effect on September 1, 1986. The act makes a number of substantive and non-substantive changes to the Indiana law. Substantive changes are summarized below.

1. IC 13–4–6–9 is amended to delete language concerning operator appeals and to add language to apply IC 4–22–1, the current Administrative Adjudication Act, to the chapter.

2. The definition of "surface coal mining operations" at IC 13–4.1–1–3(12)(a) is amended for clarification.

3. IC 13–4.1–1–5 is amended to delete language concerning the applicability of surface mining law.

4. IC 13–4.1–3–3 is amended to: clarify chemical analyses needed for coal seams and overburden, for permit application purposes; modify permit application requirements for listing notices for violations; and, provide confidentiality for certain archeological resources information.

5. IC 13–4.1–3–6 is added to the Indiana Code to provide for coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of certain other Federal Acts.

6. IC 13–4.1–4–1 is amended to provide for notice of a permit application to be given to certain federal and state governmental agencies.

7. IC 13–4.1–4–3 is amended to add new demonstrations requirements the applicant must make in a permit application.

8. IC 13–4.1–4–7 is added to provide that permits are subject to conditions imposed by the regulatory authority, including the requirement to pay fees owed to OSMRE.

9. IC 13–4.1–7–1 is amended to require coal exploration operations to comply with the revegetation requirements of IC 13–4.1–8–1 concerning all lands disturbed.

10. IC 13–4.1–7–5 is amended to provide that persons engaged in coal

explorations are subject to 13-4.1-11 and IC 13-4.1-12.

11. IC 13-4.1-7-6 is added to provide that habitats of unique or unusually high value for fish and wildlife and other related environmental values and critical habitats of threatened or endangered species shall not be disturbed during coal exploration.

12. IC 13-4.1-11-8 is amended to clarify time parameters for formally challenging notices and orders issued by the State.

13. IC 13-4.1-11-12 is added to provide that a person subject to the article who has a right to request a hearing under IC 4-22-1 or who has an interest that may be adversely affected by the outcome of a hearing under IC 4-22-1 may intervene in that hearing.

14. IC 13-2-2.5-3 is amended to add a paragraph to provide that if an operator of significant ground water withdrawal facility withdraws water by means other than pumping, the regulatory authority may temporarily restrict the quantity of ground water that may be extracted only if certain requirements have not been met.

House Enrolled Act No. 1339 is Indiana's new Administrative Adjudication Act IC 4-21.5, and will replace the current law, IC 4-22-1. The statute takes effect July 1, 1987. The Act establishes procedures for the conduct of Administrative Adjudication Act hearings. Provisions cover definitions, application of the article, adjudicative proceedings, special proceedings for emergency and other temporary orders, judicial review, and civil enforcement. The Act also would repeal IC 4-22-1, the current Indiana Administrative Adjudication Act.

Pursuant to CFR 732.15 and 732.17, the Director requests public comment on the adequacy of the above modifications. If the Director determines that the proposed modifications are in accordance with SMCRA and no less effective than the Federal regulations, the amendment will be incorporated as part of the approved Indiana program.

Procedural Matters

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

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

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

List of Subjects in 30 CFR Part 914

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

Dated: June 27, 1986.

James W. Workman,

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

[FR Doc. 86-15080 Filed 7-2-86; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 917

Receipt of Additional Material for Consideration Relating to an Amendment to the Kentucky Permanent Regulation Program

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

ACTION: Notice of Receipt of Additional Material.

SUMMARY: This notice announces receipt of additional material for consideration relating to a proposed amendment submitted by the Commonwealth of Kentucky to its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is contained in House Bill 869, receipt of which was announced for public comment in the June 11, 1986 **Federal Register** (51 FR 21184). The amendment concerns appeal of final orders of the Secretary of the Kentucky Natural Resources and Environmental Protection Cabinet (NREPC) to Circuit Courts of the county where the violation occurred.

DATE: Written comments, data or other relevant information not received on or before 4:00 p.m. July 11, 1986, will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suit 28, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Lexington, Kentucky 40504; Telephone; (606) 233-7327.

SUPPLEMENTARY INFORMATION: By letter dated April 29, 1986, Kentucky submitted to OSMRE, pursuant to 30 CFR 732.17, amendments to the Kentucky program which are contained in a number of Senate Bills and House Bills. On June 11, 1986, OSMRE published a notice in the **Federal Register** (51 FR 21184) announcing receipt of the amendments and inviting public comment thereon. The public comment period closes July 11, 1986. The public hearing, if held, will be held on July 7, 1986.

On June 19, 1986, in response to a request from OSMRE, Kentucky submitted additional material relating to House Bill 869. This bill would amend KRS 350.032 to provide that final orders of the Secretary of the NREPC would be appealable to Circuit Courts of the county where the violation occurred rather than Franklin County. The additional information contained in the July 19, 1986, submission provides an explanation of anticipated costs of implementing the requirements of the bill, the source of funds, organizational considerations and programmatic considerations.

Therefore, the Director is seeking public comment on the proposed amendment. Comments should specifically address the issue of whether the proposed amendment, with the additional information, is in accordance with SMCRA and no less effective than its implementing regulations. Pursuant to 30 CFR 732.17(h)(2)(ii), each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the Lexington Field Office, listed under **ADDRESSES.**

This announcement is made in keeping with OSMRE's commitment to public participation as a vital component in fulfilling the purposes of SMCRA.

List of Subjects in 30 CFR Part 917

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

Dated: June 27, 1986.

Arthur W. Abbs,

Acting Assistant Director, Program Operations.

[FR Doc. 86-15082 Filed 7-2-86; 8:45 am]

BILLING CODE 4310-05-M

POSTAL SERVICE

39 CFR Part 10

Proposed International Surface Air Lift Regular Service to Panama and Transit Service to Certain Latin American Countries

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Pursuant to an agreement with the postal administration of Panama and certain Latin American countries as noted in the following table "International Surface Air Lift Service Rate Groups," the Postal Service intends to begin International Surface Air Lift Service to these countries from New York City (J.F. Kennedy airmail facility) at postage rates indicated in the tables below. The proposed service is scheduled to begin on September 6, 1986.

DATE: Comments must be received on or before August 2, 1986.

ADDRESS: Written comments should be directed to the General Manager, Rate Development Division, Office of Rates, Rates and Classification Department, U.S. Postal Service, Washington, DC 20260-5350. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8620, 475 L'Enfant Plaza West, SW., Washington, DC 20260-5350.

FOR FURTHER INFORMATION CONTACT: Leon W. Perlinn, [202] 268-2673.

SUPPLEMENTARY INFORMATION: The International Mail Manual is incorporated by reference in the Code of Federal Regulations, 39 CFR 10.1. Additions to the manual concerning the proposed new services, including the rate tables reproduced below, will be made in due course. Accordingly, although 39 U.S.C. 407 does not require advance notice and the opportunity for submission of comments on international service, and the provisions of the Administrative Procedure Act regarding proposed rulemaking [5 U.S.C. 553] do not apply [39 U.S.C. 410 [a]], the Postal Service invites interested persons to submit written data, views or arguments concerning the proposed International Surface Air Lift Service to certain Latin American countries, at the rates indicated in the table below.

Lists of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

PART 10—[AMENDED]

The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552[a], 39 U.S.C. 401, 404, 407, 408.

INTERNATIONAL SURFACE AIR LIFT

[See following list for AMF and country groups]

Origin AMF group	Rate group A	Rate group B	Rate group C	Rate group D	Rate group E
a. Pound Rate [1]					
(1) Regular Service:					
East	$1.95	$2.22	$2.55	$2.66	$3.40
Central	1.70	2.47	N/A	2.57	3.22
West	1.99	2.53	2.99	2.33	3.13
(2) Regular Service M-Bag:					
East	1.76	2.00	2.30	2.39	3.06
Central	1.53	2.22	N/A	2.31	2.90
West	1.79	2.28	2.69	2.10	2.82
(3) Transit Service Regular:					
East	[2] 2.27	2.41	[2] 2.70	N/A	3.60
Central	2.02	2.64	2.40	N/A	3.42
West	N/A	2.82	N/A	N/A	3.30
(4) Transit Service M-Bag:					
East	[2] 2.04	2.17	[2] 2.43	N/A	3.24
Central	1.82	2.38	2.16	N/A	3.08
West	N/A	2.54	N/A	N/A	2.97

[1] Contact your local postmaster or customer services representative for possible discount rates based on type of mail matter and weight of mailing.

[2] Proposed pound rates.

INTERNATIONAL SURFACE AIR LIFT SERVICE RATE GROUPS

[Origin AMF's [1]]

East	Central	West
Boston	Chicago	Los Angeles.
New York City	Dallas	San Francisco.
Philadelphia	Houston	
Washington, DC	Miami	

Destination Countries for Regular and/or Transit Service:

Rate Groups

A

Belize [3]	Honduras [3]
Columbia [3]	Jamaica [3]
Costa Rica [3]	Mexico [3]
Cuba [3]	Netherlands Antilles [3]
Dominican Republic [3]	Nicaragua [3]
Ecuador [3]	Panama [2]
El Salvador [3]	Trinidad & Tobago [3]
Guatemala [3]	Venezuela [3]
Haiti [3]	

B

Albania	Ireland
Austria	Italy
Belgium	Luxembourg
Bulgaria	Netherlands
Czechoslovakia	Norway
Denmark	Poland
East Germany	Portugal
Finland	Rumania
France	Spain
Great Britain	Sweden
Greece	Switzerland
Hungary	West Germany
Iceland	Yugoslavia

C

Argentina [3]	Guyana [3]
Bolivia [3]	Paraguay [3]
Brazil [3]	Peru [3]
Chile [3]	Suriname [3]
French Guyana [3]	Uruguay [3]

D

Hong Kong	Korea, So.
India	Taiwan
Japan	

E

Australia	New Zealand
China, People's Republic	Philippines
Fiji Islands	Singapore
Malaysia	South Africa
New Guinea	Thailand

[1] All AMF's do not service all destinating countries. Contact your local postmaster or customer services representative for list of AMF's and the destinating countries served by particular AMF's.

[2] Proposed new destination country for Regular Service from New York City (J.F. Kennedy airmail facility).

[3] Proposed new destination countries for Transit Service through Panama from New York City (J.F. Kennedy airmail facility).

An appropriate amendment to 39 CFR 10.3 to reflect these changes will be published when the final rule is adopted.

Fred Eggleston,

Associate General Counsel, Legislative Division.

[FR Doc. 86-15065 Filed 7-2-86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD-FRL-3037-8]

National Ambient Air Quality Standards: Review of Criteria and Standards for Particulate Matter and Sulfur Oxides

AGENCY: Environmental Protection Agency.

ACTION: Availability of External Review Draft, and Reopening of Public Comment Period.

SUMMARY: This notice announces: (1) The availability for public review and comment of an external review draft of an addendum to the health effects chapters of the criteria document for particulate matter and sulfur oxides, and (2) the reopening of the public comment period on the proposed revisions to the national ambient air quality standards for particulate matter (49 FR 10408) for the limited purpose of taking comment on the implications, if any, of the newly available particulate matter studies evaluated in the draft addendum for decisions on the final standards.

DATES: Written comments on the criteria document addendum msut be received by the close of business on September 5, 1986. Written comments on the implications, if any, of the newly available studies for the proposed revisions to the particulate matter standards must be received by the close of business on the 30th day after the Clean Air Scientific Advisory Committee (CASAC) meets to review the criteria document and associated staff paper addenda. The date (tentatively scheduled for October), time, and place of the CASAC meeting will be announced in a subsequent **Federal Register** notice.

ADDRESSES: Comments (duplicate copies preferred) on the criteria document addendum should be submitted to: Project Officer for PM/SO_x, Environmental Criteria and Assessment Office (MD–52), Environmental Protection Agency, Attn: Docket No. ECAO–CD–79–1, Research Triangle Park, North Carolina 27711.

Comments (duplicate copies preferred) relating to the proposed revisions to the national ambient air quality standards for particulate matter should be submitted to the Central Docket Section (A–130), Environmental Protection Agency, Attn: Docket No. A–82–37, 401 M Street, SW., Washington, DC 20460.

Docket numbers ECAO'CD–71–1 and A–82–37 are located in the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC 20460. The dockets may be inspected between 8:00 and 4:00 p.m. on Weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Dennis J. Kotchmar, Project Officer, Environmental Criteria and Assessment Office (MD–52), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone (919) 541–4158, or John H. Haines, Strategies and Air Standards Division, Office of Air Quality Planning and Standards (MD–12), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone (919) 541–5531. Copies of the external review draft of the criteria document addendum entitled "Second Addendum to *Air Quality Criteria for Particulate Matter and Sulfur Oxides* (1982): Assessment of Newly Available Health Effects Information" (EPA/600/8–86/020A) may be obtained by writing or calling the U.S. Environmental Protection Agency, Center for Environmental Research Information, ORD Pubications Office, 26 West St. Clair Street, Cincinnati, Ohio 45268, Telephone 513–569–7562, (FTS 684–7562).

SUPPLEMENTARY INFORMATION: In 1982, EPA's Environmental Criteria and Assessment Office (ECAO) completed preparation of a revised criteria document, Air Quality Criteria for Particulate Matter and Sulfur Oxides (EPA–600/8–82–029aF, bF, and cF). In that same year, EPA's Office of Air Quality Planning and Standards completed preparation of staff papers to assess the implications of the revised criteria for the review, and possible revision, of the national ambient air quality standards for particulate matter (EPA–450/5–82–001) and for sulfur oxides (EPA–450/5–82–007). On March 20, 1984 (49 FR 10408), EPA proposed revisions of the particulate matter standards and formally issued the criteria document.

On April 1, 1986 (51 FR 11058), EPA announced plans to prepare addenda to the criteria document and the staff papers. The addendum to the criteria document will summarize pertinent health effects studies that have been published since the completion of the criteria document in 1982. The addenda to the staff papers will assess the implications, if any, of these studies for the national ambient air quality standards for particulate matter and sulfur oxides.

In making the April 1 announcement, the Agency made it clear that it did not intend for these addenda to reexamine all of the available health effects information or related issues that have already been addressed in the criteria document and the staff papers for particulate matter and sulfur oxides. Rather, the addenda are to focus on a limited set of scientific studies, including some identified in the particulate matter proposal, that might have implications for decisions on the proposed revisions to the national ambient air quality standards for particulate matter and for the review of the national ambient air quality standards for sulfur oxides. A complete list of the studies to be examined is presented in the external review draft of the criteria document addendum.

ECAO has now completed the external review draft of the criteria document addendum, having incorporated appropriate comments received as a result of a public workshop (51 FR 17827), and is releasing it today for public comment. The criteria document addendum together with the associated staff paper addenda will be reviewed by the Clean Air Scientific Advisory Committee (CASAC) at a public meeting planned for October of this year. The availability of the staff paper addenda and the date, time, and place of the CASAC meeting will be announced in a subsequent **Federal Register** notice.

Because it is EPA's intent to proceed as expeditiously as possible and to provide for appropriate public as well as scientific review, the Agency is reopening at this time the public comment period on the proposed revisions to the national ambient air quality standards for particulate matter. The reopening of the comment period will be for the limited purpose of taking comments on the implications, if any, of the particulate matter studies addressed in the critieria document and particulate matter staff paper addenda for decisions on the proposed revisions. To permit

consideration of the views and recommendations of CASAC, the comment period will remain open for 30 days after the CASAC meeting.

While EPA is not soliciting them at this time, any comments on the implications, if any, of the sulfur oxides studies addressed in the criteria document and staff paper addenda on the review of the national ambient air quality standards for sulfur oxides should be segregated and submitted separately from those pertaining to particulate matter. Such comments should be sent to Mr. John H. Haines or to the Central Docket Section, attention docket number A–79–28, at the appropriate address given above.

Dated: June 18, 1986.

Don R. Clay

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86–14325 Filed 7–2–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A–5–FRL–3043–7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking; extension of public comment period.

SUMMARY: On June 10, 1986 (51 FR 20994), USEPA proposed rulemaking on a revision to the Illinois State Implementation Plan (SIP) for lead, Ozone, and Carbon Monoxide (CO). This revision pertains to the Chicago and Cook County ordinances to ban the sale of leaded gasoline. USEPA's action was based upon a revision request which was submitted by the State of Illinois to satisfy the requirements of Part D of the Clean Air Act (Act). At the request of several commentors, the public comment period is being extended until August 10, 1986, to allow additional time to develop comments on the issues presented in the proposed rulemaking.

DATE: Comments must be received on or before August 10, 1986.

ADDRESSES: Comments should be submitted to: Gary V. Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch, Region V, U.S. Environmental Protection Agency (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886–6036.

Dated: June 23, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 86–15051 Filed 7–2–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Parts 153 and 166

[OPP 120003; PH FRL–2953–4]

Pesticide Advertising

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interpretive rule.

SUMMARY: EPA regulates the distribution and sale of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq. (FIFRA). EPA proposes to treat as unlawful under FIFRA section 12 the advertising of (1) any pesticide for a use authorized under a FIFRA section 5 experimental use permit; (2) any pesticide for uses authorized under a FIFRA section 18 emergency exemption, except for advertisements targeted to the geographical areas where the section 18 product is available, placed by retail dealers who stock the product, and stating the limitations on the use authorized under the emergency exemption; (3) any pesticide for a use authorized by FIFRA section 24(c) special local need registration without a prominent notice of the limitations on use under the section 24(c) registration; (4) any other unregistered pesticide, unless the pesticide is not available for sale and the advertisement so states; and (5) any registered pesticide for any other use not registered under FIFRA section 3 or 24(c). The Agency requests comments on this proposed interpretation.

DATE: Written comments on this proposed interpretation should be received on or before September 2, 1986..

ADDRESS: Submit three copies of written comments, identified with the document control number "OPP–120003," by mail to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, deliver comments to: Room 236, Cm #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this proposed interpretive rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: John C. Street, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Washington, DC 20460

Office location and telephone number: Room 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22301 (703–557–7758).

SUPPLEMENTARY INFORMATION:

I. Background

In October 1983, the Working Committee on Registration and Classification of the State FIFRA Issue Research and Evaluation Group (SFIREG) identified numerous instances of advertising of section 5 experimental use permits, section 18 emergency exemptions, section 24(c) special local need registrations, and pending new chemical registrations which they believed to be false or misleading. SFIREG recommended that EPA strengthen its position on advertising and announce its new interpretation in the **Federal Register.** EPA has considered this matter and has concluded that advertising pesticides for uses which are not yet registered, particularly if the pesticide is available for other uses, is likely to encourage persons to use the pesticide in an unlawful manner. Similarly, the Agency has concluded that preventing or limiting the advertising of uses of pesticides that are the subject of experimental use permits, emergency exemptions, or special local need registrations would lessen the likelihood of the misuse of those pesticides. This proposed interpretive rule is the result of these conclusions.

II. Advertising Covered

Advertising or promotional material in media to which pesticide users or the general public have access, such as television, radio, newspapers, trade journals, industry magazines, or billboards, would be covered by this interpretive rule. News items or

announcements would not be covered if the information they contain regarding the pesticide did not extend beyond that contained in EPA's approval, and if the limitations on use were clearly specified. Such news items or announcements typically appear in technical bulletins from manufacturers, dealers, or growers associations; agricultural extension services' newsletters, bulletins, or computerized mail systems; section 5 or 18 approval letters (or electronic mail approvals to users/user groups); and reports listing section 5 experimental use permits or section 18 emergency exemptions. Promotional material which accompanies a product as the product is sold or distributed (e.g., a product insert) is considered to be labeling, not advertising.

III. Proposed Interpretation

FIFRA section 12(a)(1)(B) makes it unlawful for any person to distribute, sell, offer for sale, hold for sale, ship, or deliver for shipment "any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required" for registration. FIFRA section 12(a)(1)(A) prohibits any person from offering to sell an unregistered pesticide. EPA proposes to interpret these provisions as making it unlawful for any person who sells, holds for sale, or distributes pesticides to place or sponsor the following types of advertising:

1. Advertising a pesticide for a use authorized under a FIFRA section 5 experimental use permit. Placement of such advertisements would subject the violator to the penalties of FIFRA section 14. EPA also could revoke the section 5 permit.

2. Advertising a pesticide for a use authorized under a FIFRA section 18 emergency exemption, except for advertisements which appear in media which reach primarily the geographical area to which the section 18 exemption applies, which state prominently the limitations on the use authorized under the exemption, and which are placed by and identify retail dealers who stock the pesticide. Placement of such advertisements would subject the violator to the penalties of FIFRA section 14. Also, the Agency could withdraw approval of the section 18 emergency exemption.

3. Advertising a pesticide for a use authorized by a FIFRA section 24(c) special local need registration without a prominent notice of the limitations on use under the section 24(c) registration. Placement of such advertisements would subject the violator to the penalties of FIFRA section 14.

4. Advertising an unregistered pesticide for any use, unless the pesticide is not available for sale in the United States (and the advertisement so states) or the advertisement is a permitted one concerning a FIFRA section 18 or 24(c) use. Placement of such an advertisement would subject the violator to the penalties of FIFRA section 14.

5. Advertising a registered pesticide product for a use for which it is not registered under FIFRA section 3, except to the extent the advertisement is a permitted one concerning a section 18 exemption or a section 24(c) registration. Placement of such an advertisement would subject the violator to the penalties of FIFRA section 14.

IV. Rationale for Proposed Policy

A. Experimental Use Permits

EPA proposes to treat as unlawful the advertising of a pesticide for a section 5 experimental use. Under Agency regulations, the application for an experimental use permit (EUP) must identify who the participants in the experimental use of the pesticide will be, where these people are located, and how many acres are involved. Since these arrangements must be made before the application is approved, advertising is unnecessary to implement the permit. Advertising of pesticides for EUP uses could encourage the sale and use of a pesticide for unregistered uses outside of the terms of the EUP, or by persons who are not authorized participants in the EUP program. By treating such aadvertising as unlawful, the Agency would lessen the likelihood of unauthorized use.

B. Emergency Exemptions

Unlimited emergency exemption advertising is inconsistent with the intent of FIFRA section 18. A FIFRA section 18 exemption is granted to a State or Federal agency, and allows use only in a specific geographical area, usually for a specified number of acres and applications and a maximum dosage rate.

Advertising a use available only under an emergency exemption may encourage misuse by persons outside the geographical area for which the section 18 is granted. The need of eligible users for information regarding pesticide availability pursuant to emergency exemptions is otherwise met through several specific notification mechanisms employed by State and Federal agencies, including distribution of copies of the section 18 approval letter, labeling, or technical information from manufacturers. Therefore, to discourage use in violation of the section 18 provisions, the Agency proposes to interpret FIFRA section 12 as not allowing the advertising of section 18 emergency exemptions.

The only exception to this policy is advertising directed primarily to the geographical area for which the section 18 exemption has been granted, if the advertising is placed by and identifies retail dealers who sell the pesticide and states the limitations on use authorized under the exemption. Because emergency exemptions are granted only under emergency conditions, there is often limited time for users to locate the pesticide, purchase it, and apply it. Therefore, it appears appropriate to allow advertising that says where the pesticide may be purchased. The restrictions are designed to discourage advertising that reaches users outside of the area covered by the exemption and to ensure that users are aware of the limitations on use.

C. Special Local Need Registrations

EPA proposes to treat as unlawful the advertising of pesticides for any use approved under FIFRA section 24(c) (special local needs) if the advertisement fails to prominently state the applicable geographic restriction. For printed advertising, the restrictions must appear in six point or larger type. The Agency recognizes section 24(c) registrations as "registered products," and, like other registered products, they may be advertised. However, a section 24(c) use is approved to meet a special local need and is geographically restricted. Advertising the registration in a national publication may be appropriate to reach a particular audience. However, if other people seeing the advertisement are not made aware that they may not use the product for the same use, they may improperly be encouraged to do so.

D. Unregistered Products

EPA proposes to treat as unlawful the advertising for any use of any pesticide product which is not registered under the procedures of FIFRA section 3, with the exceptions set forth in the next paragraph. Advertising of unregistered pesticides which may be obtained legally (e.g., because of a section 18 exemption or a section 24(c) registration) is likely to encourage persons to use the pesticide for unpermitted uses.

Units IV.B and C of this preamble discuss the extent to which advertisement of pesticides for use

under section 18 exemptions or section 24(c) special local need registrations will be regarded as lawful. The situation is different with respect to unregistered pesticides that are not available for sale in the United States. An applicant for registration of a new product often has very little time to reach customers once the product is registered, and advance advertising increases awareness that the product may soon be available. The Agency does not believe that advertising an unregistered product which is not available for sale will increase the likelihood of misuse. The Agency specifically requests comment on this provision.

E. Unregistered Uses

EPA proposes to treat as unlawful the advertising of registered products for uses that have not been registered under the procedures of FIFRA section 3, including uses which are the subject of applications for registration on file with EPA, except for permitted advertisements concerning emergency exemptions or special local needs registrations. Advertising of a registered product for unregistered uses is likely to encourage persons to use the pesticide in an unlawful manner.

F. Advertisements in Media Which Reach Pesticide Users in Other Countries

Problems also may be caused by the fact that advertising in one country of pesticide uses authorized in that country may reach users in another country where the use is not authorized, thus perhaps promoting unauthorized use in the other country. This may be a particular problem with broadcast advertisements. The Agency requests comments on steps that might be taken to address this problem, e.g., requiring advertisements of pesticide uses broadcast on American stations which have significant Canadian audiences to include a statement that the product may not be available for that use in Canada.

G. First Amendment Issues

Advertising is a form of "speech" for purposes of the First Amendment to the Constitution. Regulation of advertising thus must conform to the U.S. Supreme Court's decisions under that Amendment concerning freedom of speech. EPA believes that this proposal accords with those decisions.

The advertising EPA proposes to regulate is purely "commercial speech." Commercial speech may be prohibited if it is misleading or if it would encourage unlawful conduct. Commercial speech that neither misleads nor relates to unlawful conduct still may be regulated, but there must be a substantial governmental interest to be served by the regulation, the regulation must directly serve that interest, and the regulation must be the least stringent needed to accomplish the governmental interest. See *Central Hudson Gas* v. *Public Service Comm. of New York*, 447 U.S. 557, 563–564 (1980).

This proposed regulation would address only advertisements that, in EPA's view, make unlawful offers to sell and that may reach persons who might, as a result of the advertising, use a pesticide for unapproved purposes. It would not completely prohibit any category of advertising, except that relating to experimental use permits (where there are no legitimate potential customers for advertisers to address). The proposed restrictions have been tailored to further the governmental interest in preventing pesticide misuse while allowing necessary information to be furnished to persons who may legitimately benefit from the content of advertisements.

V. Statutory Requirements

In accordance with FIFRA section 25, EPA provided the FIFRA Scientific Advisory Panel (SAP) and the Secretary of Agriculture with copies of this proposed rule. Copies were also supplied to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate. The FIFRA Scientific Advisory Panel waived scientific review and comment on the proposed rule. No comments were received from either of the Congressional Committees. The Department of Agriculture commented that they had no difficulty with the proposed rule, but warned the Agency to exercise discretion in withdrawing a section 18 emergency exemption so as to avoid punishing the user by removing an essential pest control tool. EPA has considered this response and agrees with the Department's comment. The Agency will exercise utmost caution before withdrawing a section 18 emergency exemption.

VI. Procedural Matters and Required Regulatory Reviews

A. Review Under Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. A "major" rule is one which has an annual effect of $100 million or more, or results in a major increase in costs or prices, or has significant adverse effects on economic activities. This regulation has been reviewed and the Agency concludes that this proposed rule does not meet the requirements for data generation and will not require submission of any additional information, does not have an annual effect of $100 million, and does not result in a major increase in costs or prices or have significant adverse effects on economic activities.

This proposed rule has been submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. (b)), I hereby certify that this rule will not have a significant impact on a substantial number of small businesses.

C. Paperwork Reduction Act

This proposed interpretive rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects in 40 CFR Parts 153 and 166

Pesticides and pests, Recordkeeping and reporting requirements, Policy statements.

Dated: June 23, 1986.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that Subchapter E of 40 CFR Chapter I be amended as follows:

PART 153—STATEMENTS OF POLICIES AND INTERPRETATIONS

1. In Part 153:

a. The authority citation for Part 153 is revised to read as follows:

Authority: 7 U.S.C. 136 et seq.

b. By adding Subpart A consisting at this time of § 153.12 to read as follows:

Subpart A—General Provisions

§ 153.12 Pesticide advertising.

(a) FIFRA section 12(a)(1)(A) and (b) make it unlawful for any person to "offer to sell" any pesticide if it is unregistered, or if claims made for it as part of its distribution or sale substantially differ from any claim made for it as part of the statement required in connection with its registration under FIFRA section 3. EPA interprets these provisions as making unlawful for any person who sells, holds for sale, or distributes any pesticide to place or sponsor certain kinds of advertisements

in any advertising medium to which pesticide users or the general public have access.

(b) The kinds of advertisements that EPA regards as unlawful under this interpretation are those which recommend or suggest the purchase or use of:

(1) Any pesticide for a use authorized under a FIFRA section 5 experimental use permit;

(2) Any pesticide for a use authorized under a FIFRA section 18 emergency exemption, except for advertisements that are placed in media which address primarily persons in the geographical area to which the exemption applies, and that are placed by and state the name and address of one or more retail dealers who stock the pesticide, and that contain a prominent notice of the limitations on use under the section 18 emergency exemption;

(3) Any pesticide for any use authorized only by a FIFRA section 24(c) special local need registration, unless the advertisement contains a prominent notice of the limitations on use under the section 24(c) registration;

(4) Any unregistered pesticide for any use, unless the pesticide is not available for sale in the United States, or unless the advertisement is one permitted by paragraph (b)(2) or (3) of this section; or

(5) Any unregistered use of a registered pesticide product, unless the advertisement is one permitted by paragraph (a)(2) or (3) of this section.

(c) For purposes of paragraph (b) of this section, a "prominent notice of the limitations on use" is one which sets forth the limitations on use in a manner reasonably likely to be understood by persons to whom the advertisement is addressed. For printed advertising, this criterion will be met by a legend in six-point or larger type.

PART 166—EXEMPTION OF FEDERAL AND STATE AGENCIES FOR USE OF PESTICIDES UNDER EMERGENCY CONDITIONS

2. In Part 166:

a. The authority section for Part 166 is revised to read as follows:

Authority: 7 U.S..C. 136 et seq.

b. By revising § 166.7 to read as follows:

§ 166.7 User notification; advertising.

(a) A State or Federal agency that obtains an exemption may notify eligible users of the availability of the exempted pesticide(s), through user groups, retail dealers, and other means. Notification may include distributing copies of the section 18 approval letter, labeling, or other information eligible persons.

(b) As set forth more fully in § 153.12 of this chapter, EPA interprets FIFRA section 12(a)(1)(A) and (b) as making it unlawful for any person who sells, holds for sale, or distributes any pesticide to advertise the pesticide for any use authorized by an emergency exemption, except for advertisements that are placed in media which address primarily persons in the geographical area to which the exemption applies, that are placed by and state the name and address of one or more retail dealers where users may buy the pesticide, and that contain a prominent notice of the limitations on use under the emergency exemption. EPA may withdraw an exemption if the use of the pesticide covered by the exemption is advertised unlawfully.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6719]

Proposed Flood Elevation Determinations; California et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

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

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

ADDRESSES: See table below.

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

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

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

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

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains

PART 67—[AMENDED]

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

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

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

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CALIFORNIA	
Hanford (city), King County	
Shallow Flooding:	
About 1,200 feet east of 10th Avenue, 200 feet south of Clover Lane and 300 feet west of Niell Court	*243
About 900 feet east of 10th Avenue, 750 feet south of Clover Lane, and 1,100 feet north of Grangeville Boulevard	*248
Maps available for inspection at the office of the City Engineer, City Hall, 400 North Douty Street, Hanford, California.	
Lemoore (city), Kings County	
Shallow Flooding: About 600 feet east of Lemoore Avenue and extends to the eastern corporate limits	*227
Maps available for inspection at the Department of Public Works, City Hall, 119 Fox Street, Lemoore, California.	
GEORGIA	
Atlanta (city), Fulton and DeKalb Counties	
Caldwell Branch:	
About 2,000 feet downstream of Melvin Drive	*824
About 2,500 feet upstream of Melvin Drive	*867
Camp Creek:	
About 1,800 feet downstream of Seaboard Coastline Railroad	*814
At confluence of North Fork Camp Creek	*822
North Fork Camp Creek:	
About 0.5 mile downstream of Redwine Road	*822
About 0.45 mile upstream of Interstate 285	*856
Center Hill Tributary:	
At mouth	*777
Just downstream of Spring Street	*791
Just upstream of Spring Street	*796
Just downstream of Bankhead Highway	*848
Just upstream of Bankhead Highway	*856
About 925 feet upstream of Detroit Avenue	*872
About 935 feet upstream of Detroit Avenue	*877
Just upstream of Simpson Road	*883
Chattachoochee River:	
About 3,300 feet downstream of Bankhead Highway	*766
About 2,100 feet upstream of Interstate 75	*778
Clear Creek:	
At mouth	*801
About 950 feet downstream of Polo Drive	*811
About 400 feet upstream of Polo Drive	*823
About 250 feet downstream of Park Drive	*846
Just downstream of Park Drive	*860
About 1,350 feet upstream of Park Drive	*864
Cowart Lake Tributary:	
About 0.5 mile downstream of Tell Road	*830
Just downstream of Creek Valley Court	*884
Empire Park Tributary:	
At mouth	*802
Just downstream of Browns Mill Road	*822
Federal Prison Creek:	
At mouth	*793
About 0.74 mile upstream of Constitution Road	*844
About 0.78 mile upstream of Constitution Road	*856
About 1.35 miles upstream of Constitution Road	*908
About 1.38 miles upstream of Constitution Road	*918
About 1.53 miles upstream of Constitution Road	*925
Intrenchment Creek:	
Just upstream of Moreland Avenue	*865
About 0.9 mile upstream of Woodland Avenue	*880
Lenox Road Tributary:	
At mouth	*819
About 3,000 feet upstream of Shady Valley Drive	*829
Mozley Park Tributary:	
At confluence with Procotor Creek	*832
Just downstream of North Avenue	*849
Just upstream of North Avenue	*855
Nancy Creek:	
At mouth	*774
About 850 feet upstream of Lake Forrest Road	*823
About 1,000 feet upstream of Lake Forrest Road	*830

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 0.9 mile upstream of Wieuca Road	*841
Niskey Lake Tributary:	
About 1.1 miles downstream of Niskey Lake Road	*809
About 0.8 mile downstream of Niskey Lake Road	*816
About 0.76 mile downstream of Niskey Lake Road	*845
About 850 feet downstream of Niskey Lake Road	*861
Just upstream of Niskey Lake Road	*870
About 0.6 mile upstream of Niskey Lake Road	*902
Peachtree Creek:	
At mouth	*774
About 900 feet upstream of Piedmont Road	*807
North Fork Peachtree Creek:	
At mouth	*807
Just upstream of confluence of Lenox Road Tributary	*819
South Fork Peachtree Creek:	
At mouth	*807
About 550 feet upstream of confluence of Rock Creek	*834
Poole Creek:	
At mouth	*797
About 3,000 feet upstream of Jonesboro Road	*827
Proctor Creek:	
At mouth	*768
Just downstream of Hollywood Road	*778
Just upstream of Hollywood Road	*783
Just downstream of Kerry Circle	*803
Just upstream of Kerry Circle	*810
Just downstream of North Avenue	*871
Just upstream of Seaboard Coastline Railroad	*900
About 1,700 feet upstream of Simpson Road	*906
Just upstream of Burbank Drive	*920
About 300 feet downstream of Martin Luther King Jr. Drive	*927
Just upstream of Martin Luther King Jr. Drive	*941
Sandy Creek:	
About 800 feet downstream of Sandy Creek Road	*766
Just downstream of Interstate 285	*788
About 300 feet upstream of Interstate 285	*800
Just downstream of Waterford Road	*814
Just upstream of Waterford Road	*820
At Baker Ridge Drive	*843
South River:	
About 1,000 feet downstream of the confluence of Federal Prison Creek	*793
Just downstream of Jonesboro Road	*797
Just upstream of Jonesboro Road	*802
At confluence of South Fork South River	*818
North Fork South River:	
At confluence of South Fork South River	*818
Just downstream of confluence of Middle Branch South River	*822
Just downstream of Lakewood Avenue	*890
Just downstream of Pryor Road	*905
Just upstream of Pryor Road	*926
About 1,050 feet upstream of Joy-Land Place	*927
Middle Branch South River:	
At mouth	*824
About 300 feet upstream of Lakewood Avenue	*90
About 1,300 feet upstream of Fair Drive	*908
South Fork South River:	
At mouth	*818
Just downstream of Springdale Road	*855
Just downstream of Springdale Road	*865
Sugar Creek:	
Just upstream of Glenwood Avenue	*922
Just downstream of Wyman Street	*931
Just upstream of Wyman Street	*936
About 300 feet upstream of Memorial Drive	*937
Utoy Creek:	
About 0.9 mile donstream of confluence of Wildwood Lake Tributary	*781
About 1.3 miles upstream of confluence of Wildwood Lake Tributary	*804
North Utoy Creek:	
About 1,300 feet downstream of Benjamin E. Mays Drive	*809
About 1,000 feet upstream of Beecher Road	*894

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
South Utoy Creek:	
About 2000 feet downstream of Childress Drive	*821
About 500 feet upstream of Alison Court	*895
Whetstone Creek: Within community	*773
East Fork Whetstone Creek:	
At confluence with Whetstone Creek	*773
Just downstream of La Dawn Lane	*783
Just upstream of La Dawn Lane	*790
Just downstream of Marietta Road	*818
Wildwood Lake Tributary:	
At mouth	*794
Just downstream of Plainville Drive	*809
About 500 feet upstream of Plainville Drive	*817
Just upstream of Branch Drive	*850
Maps available for inspection at the Bureau of Highways and Streets, Department of Public Works, 224 Central Avenue, SW, Atlanta, Georgia.	
Send comments to The Honorable Andrew Young, Mayor, City of Atlanta, City Hall, 68 Mitchell Street, SW, Atlanta, Georgia, 30335.	
Effingham County (unincorporated areas)	
Dasher Creek:	
About 700 feet upstream of Seckinger Ford Road	*20
About 3,900 feet upstream of Baker Hill Road Extension	*30
Willowpeg Creek:	
At confluence with Sweigoffer Creek	*24
Just downstream of Seaboard Cost Line Railroad	*50
Polly Creek:	
Just downstream of Zeigler Road	*39
About 2,200 feet upstream of State Route 21	*62
Sweigoffer Creek:	
Just upstream of Old Augusta Road	*17
Just downstream of South Blanford Road	*45
Ebenezer Creek:	
Just upstream of Log Landing Road	*28
About 5,000 feet upstream of State Route 119	*44
Jacks Branch:	
At mouth	*37
About 1.45 miles upstream of Tusculum-Springfield Road	*68
Snooks Branch:	
At mouth	*47
Just downstream of State Route 119	*55
Just upstream of State Route 119	*60
Just downstream of First Street	*77
White Deer Branch:	
At mouth	*48
About 1.4 miles upstream of State Route 119	*77
Maps available for inspection at the Board of Commissioners Office, County Courthouse, P.O. Box 307, Springfield, Georgia.	
Send comments to The Honorable Neol C. Conaway, Chairman, Board of Commissioners, Effingham County, County Courthouse, P.O. Box 307, Springfield, Georgia 31329.	
Springfield (city), Effingham County	
Ebenezer Creek:	
Just downstream of Stillwell Road	*36
At confluence of Jacks Creek	*37
Jacks Creek:	
At confluence with Ebenezer Creek	*37
At confluence of Snooks Branch	*47
Snooks Branch:	
At confluence with Jacks Creek	*47
Just downstream of State Route 119	*55
Just upstream of State Route 119	*60
Just downstream of First Street bridge	*77
Maps availble for inspection at the City Clerk's Office, City Hall, Springfield, Georgia.	
Send comments to The Honorable Russell Pittman, Mayor, City of Springfiled, P.O. Box 1, Springfield, Georgia 31329.	
HAWAII	
Kauai County	
Wainiha River: 2,180 feet upstream of Kuhio Highway Bridge	*23

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Opaekaa Stream: 660 feet upstream of Opaekaa Road Bridge	*299
Opaekaa Tributary: At Poo Road Bridge	*311
Kekaka Drainageway: At intersection of Kokee Road and Kekaha Road and Kekaha Road	*12
Waimea Stream: 580 feet upstream of Kaumaulii Highway Bridge	*14
Lawai Stream: 180 feet upstream of Kaumaulii Highway Bridge	*483
Huleia Stream: 700 feet downstream of confluence with Papakolea stream	*14
Papakolea Stream: 2,000 feet upstream of confluence with Huleia Stream	*15
Coastal Flooding: At coastal mile marker 97	*11
Maps available for review at the County Engineer's Office, County of Kauai, Department of Public Works, 4396 Rice Street, Lihue, Kauai, Hawaii.	
Send comments to The Honorable Tony T. Kunimura, Mayor, County of Kauai, 4396 Rice Street, Lihue, Kauai, Hawaii 96766.	
KANSAS	
Cedar Point (city), Chase County	
Cottonwood Creek:	
About 1,500 feet downstream of First Street	*1,252
About 2,100 fee upstream of First Street	*1,254
Maps available for inspection at the City Hall, Cedar Point, Kansas.	
Send comments to The Honorable Bertha Linnens, Mayor, City of Cedar Point, City Hall, Cedar Point, Kansas 60843.	
MARYLAND	
St. Mary's County	
Chaptico Creek:	
At Chaptico Point	*6
Upstream side of State Route 234 Bridge	*16
0.77 mile downstream of Asher Road	*55
Beverly Road extended	*56
Coffee Hill Run:	
Upstream side of Chaptico-Mechanicsville Road Bridge	*17
Approximately .8 mile upstream of Chaptico-Mechanicsville Road Bridge	*27
Hayden Run:	
At confluence with Chaptico Creek	*17
Approximately .8 mile upstream of confluence with Chaptico Creek	*25
Approximately .3 mile downstream of confluence with Forrest Hall Branch	*34
Approximately 260 feet downstream of confluence with Forrest Hall Branch	*36
Forrest Hall Branch:	
Approximately 600 feet upstream of confluence with Haden Run	*37
Approximately .6 mile upstream of Baptist Road Bridge	*50
Hillton Run:	
Approximately 575 feet downstream of State Route 5 Bridge	*6
Approximately 1 mile upstream of State Route Bridge	*28
Approximately 2 miles upstream of State Route 5 Bridge	*52
McIntosh Run:	
At Buzzard Point	*6
Approximately .8 mile downstream of Waldorf Leonardtown Road Bridge	*10
Approximately 1 mile upstream of Waldorf Leonardtown Road Bridge	*21
Approximately 1 mile downstream of McIntosh Road Bridge	*28
Upstream side of McIntosh Road Bridge	*39
Jarboesville Run:	
At confluence with St. Mary's River	*29
Downstream side of Chancellors Run Road Bridge	*46
Approximately 2 miles upstream of Chancellors Run Road Bridge	*74

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
St. Mary's River:	
At Warehouse Point	*5
Downstream side of State Route 5 Bridge	*17
Downstream side of Indian Bridge Road Bridge	*21
Downstream side of Indian Bridge Road Bridge	*27
Downstream side of confluence with Jarboesville Run	*29
Wicomico River:	
Shoreline at Luckland Point	*6
Shoreline at Bluff Point	*8
Potomac River:	
Shoreline at Lane Pond	*5
Shoreline at Poseys Bluff	*8
Entire western shoreline at St. Clements Island	*9
Chesapeake Bay:	
At Oyster Point	*5
Shoreline at Cedar Point	*8
Patuxent River:	
Shoreline at Captain Point	*6
Green Holly Road extended	*8
Eastern Branch:	
At confluence with St. Mary's River	*5
At confluence of Hillton Run	*6
Maps available for inspection at the Office of Planning and Zoning, Leonardtown, Maryland.	
Send comments to The Honorable Edward T. Cox, St. Mary's County Administrator, P.O. Box 653, Leonardtown, Maryland 20650.	
MICHIGAN	
Alabaster (township), Iosco County	
Lake Huron: Along shoreline (Saginaw Bay)	*584
Maps available for inspection at the Township Hall, 1716 South U.S. 23, Tawas, Michigan.	
Send comments to The Honorable Robert Huddy, Township Supervisor, Township of Alabaster, Alabaster Township Hall, 1716 South U.S. 23, Tawas, Michigan 48763.	
Dexter (township), Washtenaw County	
Huron River:	
Just downstream of North Territorial Road	*845
About 1,000 feet upstream of Flook Dam	*852
Portage Lake: Entire shoreline	*852
Little Portage Lake: Entire shoreline	*852
Silver Lake: Entire shoreline	*876
Losee Lake: Entire shoreline	*880
Halfmoon Lake: Entire shoreline	*885
North Lake: Entire shoreline	*939
Blind Lake: Entire shoreline	*885
Maps available for inspection at the Dexter Township Hall, 6680 Dexter-Pinckney Road, Dexter, Michigan.	
Send comments to The Honorable James L. Drolett, Township Supervisor, Township of Dexter, Dexter Township Hall, 6880 Dexter-Pinckney Road, Dexter, Michigan 48130.	
Fowlerville (village), Livingston County	
Red Cedar River:	
About 0.6 mile downstream of Grand River	*883
About 1,900 feet upstream of Chessie System	*887
County Drain No. 2:	
At mouth	*884
About 250 feet upstream of Pinewood Drive	*899
Maps available for inspection at the Village Hall, 137 North Grand Avenue, Fowlerville, Michigan.	
Send comments to The Honorable Keith Liverence, Village President, Village of Fowlerville, Village Hall, 137 North Grand Avenue, Fowlerville, Michigan 48836-0677.	
Litchfield (city), Hillsdale County	
St. Joseph River:	
About 3,300 feet downstream of Litchfield Road	*1,007
About 1.0 mile upstream of Anderson Road	*1,018
Maps available for inspection at the City Hall, 221 Jonesville Street, Litchfield, Michigan.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Edwin Smith, Mayor, City of Litchfield, City Hall, 221 Jonesville Street, Litchfield, Michigan 49252	
Manistee (city), Manistee County	
Lake Michigan: Within community	*584
Manistee Lake: Within community	*584
Maps available for inspection at the Assessor Office, City Hall.	
Send comments to The Honorable John Deloa Pia, Mayor, City of Manistee, 70 Maple Street, Manistee, Michigan 49660.	
MINNESOTA	
Scott County (unincorporated areas)	
Minnesota River:	
About 3.6 miles upstream of Chicago and North Western Railroad	*725
At southern County Boundary	*740
Sand Creek:	
At mouth	*725
About 1.5 miles upstream of County Road 61	*834
Maps available for inspection at the Scott County Courthouse, P.I.E. Office, Room A102, Shakopee, Minnesota	
Send comments to the Honorable Mark Stromwall, Chairman, County Board, Scott County, County Courthouse, P.I.E. Office, Room A102, Shakopee, Minnesota 55379.	
NEW JERSEY	
Dover (town), Morris County	
Rockaway River:	
Downstream corporate limits	*553
At confluence of McKeels Brook including McKeels Brook from its confluence with Rockaway River to approximately 535 feet upstream	*557
Approximately 50 feet upstream of Warren Street	573
At confluence of Jackson Brook including Jackson Brook from its confluence with Rockaway River to approximately 550 feet upstream	*580
Upstream side of Rutgers Street	*588
Upstream side of upstream Conrail (2nd crossing)	*603
Upstream corporate limits	*611
Maps available for inspection at the Town Hall, 37 North Sussex Street, Dover, New Jersey.	
Send comments to The Honorable Aldo Cicchetti, Mayor of the Town of Dover, Morris County, P.O. Box 798, Dover, New Jersey 07801.	
Randolph (township), Morris County	
Rockaway River:	
Downstream corporate limits	*542
Downstream side of Dover-Rockaway Road	*548
Upstream corporate limits	*553
Maps available for inspection at 502 Millbrook Avenue, Randolph, New Jersey.	
Send comments to The Honorable George J. Szatkowski, Jr., Mayor of the Township of Randolph, Morris County, 502 Millbrook Avenue, Randolph, New Jersey 07869.	
Wharton (borough), Morris County	
Rockaway River:	
Downstream corporate limits	*591
At confluence of Green Pond Brook	*612
Downstream side of North Main Street	*635
Approximately 1,200 feet downstream of Pine Street	*644
Upstream corporate limits	*660
Green Pond Brook:	
At confluence with Rockaway river	*612
Upstream side of State Route 15	*622

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upstream side of culvert under abandoned bridge	*653
Upstream corporate limits	*683
Maps available for inspection at the Municipal Building, Warton, New Jersey.	
Send comments to The Honorable Thomas P. Beirne, Mayor of the Borough of Wharton, Morris County, 10 Robert Street, Wharton, New Jersey 07885.	
NEW YORK	
Colchester (town), Delaware County	
East Branch Delaware River:	
Approximately 1.8 miles upstream of Shinhopple Road bridge	*1,068
Approximately 160 feet upstream of Corbett Bridge	*1,082
Upstream side of Covered Bridge	*1,102
Approximately 1,900 feet upstream of State Route 30 bridge	*1,104
Downs Brook:	
At confluence with East Branch Delaware River	*1,101
Approximately .04 mile upstream of State Route 30 bridge	*1,138
Wilson Hollow Brook:	
At confluence with Downs Brook	*1,125
Approximately .3 mile upstream of Town Route 10	*1,177
Maps available for inspection at the Colchester Town Hall, Downsville, New York.	
Send comments to The Honorable Robert A. Homovich, Supervisor of the Town of Colchester, Delaware County, P.O. Box 321, Downsville, New York 13755.	
Deerpark (town), Orange County	
Delaware River:	
Downstream corporate limits	*449
Approximately 200 feet downstream of CONRAIL bridge	*464
Neversink river:	
Downstream side of Interstate Route 84	*428
At confluence of Gold Creek	*432
Downstream side of Neversink Drive	*441
Downstream side of Graham Road	*469
Downstream side of State Route 209	*497
Approximately .83 mile upstream of State Route 209	*520
Approximately 1.24 miles upstream of State Route 209	*538
Approximately 1.66 miles upstream of State Route 209	*560
Approximately 1.64 miles downstream of Oakland Valley Road	*580
Approximately 1.11 miles downstream of Oakland Valley Road	*600
Approximately .57 mile downstream of Oakland Valley Road	*620
Upstream corporate limits	*646
Basher Kill:	
Confluence with Neversink River	*484
Upstream side of State Route 211	*488
Upstream side of Port Orange Road	*490
Downstream side of Otisville Road	*501
Upstream Corporate limits	*506
Maps available for inspection at the Huguenot Town Hall, Route 209, Huguenot, New York.	
Send comments to The Honorable James F. Garvey, Supervisor of the Town of Deerpark, Orange County, Drawer A, Huguenot, New York 12746.	
Highland (town), Sullivan County	
Delaware River:	
At downstream corporate limits	*577
At State Route 55	*589
Approximately 200 feet upstream of confluence of Beaver Brook	*604
Approximately 350 feet downstream of Roebling Bridge	*619
Approximately 0.5 mile upstream of confluence of Lackawaxen River	*624
Maps available for inspection at the Town Hall, Eldred, New York.	
Send comments to The Honorable Andrew Bovar, Supervisor of the Town of Highland, Sullivan County, P.O. Box 239, Eldred, New York 12732.	
Housfield (town), Jefferson	
Lake Ontario: Entire shoreline within community	*249
Maps available for inspection at the Town Hall, 240 Dodge Avenue, Sacketts Harbor, New York.	
Send comments to The Honorable Edward Cobb, Supervisor of the Town of Hounsfield Jefferson County, Town Hall, 240 Dodge Avenue, Sacketts Harbor, New York 13685.	
Willsboro (town), Essex County	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Hall, Willsboro, New York.	
Send comments to The Honorable Florence E. Hathaway, Supervisor of the Town of Willsboro, Essex County, P.O. Box 378, Willsboro, New York 12996.	
NORTH CAROLINA	
Beaufort County (unincorporated areas)	
Atlantic Ocean/Pamlico Sound/Pamlico River:	
At mouth of Satterthwaite Creek	*7
At mouth of Broad Creek	*11
Acre Swamp:	
Just upstream of N.C. 32	*26
About 1.5 miles upstream of N.C. 32	*29
Aggie Run:	
Just upstream of S.R. 1410	*12
At mouth of Old Ford Swamp	*21
Old Ford Swamp:	
At mouth	*21
At mouth of Big Swamp	*26
Big Swamp:	
At mouth	*26
Just downstream of S.R. 1422	*32
Bailey Creek: Within community	*9
Bear Creek:	
About 0.75 mile downstream of confluence of Chapel Branch	*10
Just upstream of N.C. 33	*28
Blounts Creek:	
Just upstream of N.C. 33	*11
Just downstream of Norfolk Southern Railway	*16
Broad Creek:	
About 0.5 mile downstream of N.C. 32	*11
Just downstream of U.S. HWY 264	*14
Beaverdam Swamp:	
At mouth	*15
Just downstream of S.R. 1507	*38
Broad Creek Tributary 1:	
At mouth	*15
About 1.4 miles upstream of S.R. 1501	*30
Broad Creek Tributary 2:	
At mouth	*16
Just upstream of Farm Field Road	*28
Chapel Branch:	
At mouth	*13
Just upstream of S.R. 1157	*44
Chocowinity Creek:	
At mouth	*11
About 0.4 mile upstream of S.R. 1127	*23
Chocowinity Creek Tributary 1:	
At mouth	*12
Just upstream of N.C. 33	*25
Chocowinity Creek Tributary 2:	
At mouth	*18
Just upstream of N.C. 33	*24
Cindy Edwards Branch: Within community	*18
Cypress Run:	
At mouth	*8
Just upstream of S.R. 1926	*11
Durham Creek:	
About 0.65 mile downstream of confluence of Upper Broad Creek	*23
Just upstream of S.R. 1934	*34
Durham Creek Tributary:	
Just upstream of S.R. 1932	*16
Just downstream of Norfolk Southern Railway	*26
Just downstream of N.C. 33	*35
Fork Swamp:	
Just downstream of S.R. 1530	*30
Just upstream of Norfolk Southern Railway	*34
Hall Swamp:	
At mouth	*17
Just upstream of S.R. 1507	*38
Hall Swamp Tributary 1:	
At mouth	*22
About 1,000 feet upstream of confluence of Tributary A	*31
Hall Swamp Tributary 2:	
At mouth	*32
Just upstream of S.R. 1507	*43
Tributary A:	
At mouth	*30
Just upstream of S.R. 1507	*43
Harvey Creek:	
At mouth	*10
Just upstream of U.S. HWY 264	*20
Herring Run:	
About 1,000 feet downstream of S.R. 1516	*27
About 2,800 feet upstream of S.R. 1516	*35
Horse Branch:	
Just upstream of S.R. 1136	*19
Just upstream of Norfolk Southern Railway	*56
Horse Branch Tributary:	
At mouth	*37
Just downstream of Farm Road	*39
Joe Branch:	
At mouth	*14
Just upstream of S.R. 1127	*44
Latham Creek:	
At mouth	*21
At mouth of Gum Swamp	*31
Gum Swamp:	
At mouth	*31
Just upstream of U.S. Hwy. 17	*39
Maple Branch (near Chocowinity):	
At mouth	*11
About 0.85 mile upstream of S.R. 1136	*32
Maple Branch Tributary (near Chocowinity):	
At mouth	*14
Just upstream of U.S. Hwy. 17	*31
Maple Branch (near Washington):	
At mouth	*11
About 1.15 miles upsteam of U.S. Hwy. 264	*22
Mitchell Branch	
At mouth	*11
Just upstream of S.R. 1407	*23
Morris Run:	
About 0.3 mile downstream of S.R. 1126	*23
Just upstream of S.R. 1181	*29
Pantego Creek:	
At confluence of Cuckolds Creeks	*9
Just upstream of S.R. 1626	*12
Poundpole Swamp Branch:	
Just upstream of S.R. 1107	*20
Just upstream of S.R. 1951	*32
Pungo Swamp:	
About 400 feet upstream of U.S. Hwy. 264	*13
Rowland Creek: Within community	*10
South Creek: Within community	*8
Tankard Creek:	
At mouth	*10
Just upstream of S.R. 1607	*14
Tranters Creek:	
About 1.0 mile southwest of the intersection of U.S. Hwy. 264 and S.R. 1405	*10
About 2,000 feet southwest of the intersection of S.R. 1440 and Flanders Road	*11
White Branch:	
Just upstream of S.R. 1136	*17
About 3,600 feet upstream of S.R. 1151	*36

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the County Courthouse, P.O. Box 70, Chocowinity, North Carolina.	
Send comments to The Honorable Ledrue Buck, Chairman, Board of County Commissions, Beaufort County, County Courthouse, P.O. Box 70, Chocowinity, North Carolina 27817.	
Morganton (city), Burke County	
Catawba River:	
About 0.76 mile downstream of confluence of Hunting Creek	*1,004
About 3.4 miles upstream of Independence Boulevard	*1,033
Warrior Fork: Within community	*1,014
Wilson Creek:	
At mouth	*1,014
About 0.80 mile upstream of State Road 1414	*1,082
Hunting Creek:	
At mouth	*1,006
About 3,150 feet upstream of State Road 1940	*1,105
Hunting Creek Tributary No. 1:	
At mouth	*1,032
About 3,950 feet upstream of mouth	*1,045
Canoe Creek:	
At mouth	*1,023
Just downstream of State Road 126	*1,038
Silver Creek:	
At mouth	*1,022
About 1.57 miles upstream of Interstate 40	*1,046
Little Silver Creek:	
At mouth	*1,025
About 3,750 feet upstream of Causby Road	*1,115
Bailey Fork:	
At mouth	*1,024
About 3,800 feet upstream of Interstate 40	*1,037
Sandy Run:	
At mouth	*1,038
About 2.4 miles upstream of mouth	*1,157
Fiddlers Run:	
At mouth	*1,047
Just downstream of State Road 1940	*1,124
East Prong Creek:	
At mouth	*1,043
About 1.36 miles upstream of State Road 1972	*1,106
Maps available for inspection at the City Hall, 201 West Meeting Street, Morganton, North Carolina.	
Send comments to The Honorable Douglas O. Bean, City Manager, City of Morganton, P.O. Drawer 430, Morganton, North Carolina 28655.	
Mount Airy (city), Surry County	
Ararat River:	
About 3,750 feet downstream of confluence of Lovills Creek	*986
About 1,200 feet upstream of Linville Road	*1,034
Lovills Creek:	
At mouth	*991
About 3,850 feet upstream of West Lebanon Street	*1,051
Tumbling Rock Branch:	
At mouth	*1,027
Just downstream of Tumbling Rock Lake Dam	*1,081
Just upstream of Tumbling Rock Lake Dam	*1,102
About 1,900 feet upstream of Industrial Park Road	*1,151
Maps available for inspection at the City Hall, 300 S. Main Street, Mt. Airy, North Carolina	
Send comments to The Honorable S.L. Spencer, City Manager, City of Mount Airy, P.O. Box 70, Mt. Airy, North Carolina 27030.	
Pineville (town), Mecklenburg County	
Sugar Irwin Creek:	
About 3,300 feet downstream of the confluence of McCullough Branch	*537
About 1,600 feet upstream of Pineville—Matthews Road	*542

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Little Sugar Creek:	
About 2.5 miles downstream of Lancaster Highway	*540
About 0.9 mile upstream of Pineville—Matthews Road	*555
McMullen Creek:	
Just upstream of Pineville—Matthews Road	*539
Just downstream of Johnston Road	*541
Maps available for inspection at the Town Hall, 118 College Street, Pineville, North Carolina	
Send comments to The Honorable W.F. Blankenship, Mayor, Town of Pineville, Town Hall, 118 College Street, Pineville, North Carolina 28134.	
OHIO	
Bowerston (village), Harrison County	
Conotton Creek:	
About 500 feet downstream of State Route 151	*937
About 2,000 feet upstream of State Street	*941
Maps available for inspection at the Town Hall, 205 Penn Avenue, Box 46, Bowerston, Ohio.	
Send comments to The Honorable Arlie King, Mayor, Village of Bowerston, Town Hall, 205 Penn Avenue, Box 46, Bowerston, Ohio 44695.	
Scio (village), Harrison County	
Conotton Creek:	
About 1,200 feet downstream of Eastport Road	*966
About 1,400 feet upstream of Main Street	*971
Irish Creek: Within community	
Maps available for inspection at the Municipal Building, Scio, Ohio.	
Send comments to The Honorable Darreld Snider, Mayor, Village of Scio, Municipal Building, Scio, Ohio 43988.	
OREGON	
Curry County (unincorporated areas)	
Sixes River: The west edge of U.S. Highway 101, 40 feet north from its intersection with Sixes River Road	*32
Rouge River: Intersection of Indian Creek and Jerry's Flat Road	*23
Rouge River (at Agness): The west edge of Agness Road at its intersection with Bear Camp Road	*178
Hunter Creek: 75 feet upstream from the center of Swinging Bridge Road	*57
Chetco River: 100 feet downstream from the center of U.S. Highway 101	*12
Winchuck Creek: 100 feet upstream from the center of U.S. Highway 101	*14
Elk River: 80 feet downstream from the center of U.S. Highway 101	*35
Pistol River: 100 feet upstream from the center of Pistol Road	*15
Pacific Ocean at Hunter Creek: 500 feet due west from the middle of the U.S. Highway 101 and the Hunter Creek Road intersection	*17
Pacific Ocean at Winchuck River: 600 feet due west from the center of the north end of the runway at Crissy Airport	*25
Maps are available for review at the Building Department, Division of Public Services, P.O. Box 746, Gold Beach, Ocean.	
Send comments to The Honorable Thomas McKenzie, Chairman, Curry County Board of Commissioners, Box 746, Gold Beach, Oregon 97444.	
Umatilla County (unincorporated areas)	
Umatilla River: Approximately 50 feet upstream from the center of Bridge Road	*450
South Fork Walla Walla River: Approximately 65 feet upstream from the center of South Fork Walla Walla River Road (County Road 600)	*1,977
Patawa Creek: At the Western Road casing of Old Dump Road (County Road 991)	*1,161

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Waterman Gulch: Approximately 260 feet upstream from the center of County Road 725	*1,741
Stage Gulch: Approximately 600 feet northwest along the upstream side of Union Pacific Railroad from the intersection of Union Pacific Railroad and Stage Gulch	*591
Walla Walla River: Approximately 20 feet upstream from the center of McCoy Bridge	*853
Mill Creek: Approximately 20 feet upstream from the center of Mill Creek Glen Bridge	*2,111
McKay Creek: Approximately 30 feet upstream from the center of South West Kirk Street	*1,045
Tutuilla Creek: At confluence with Umatilla River near Interstate 84	*1,024
Wildhorse Creek: Approximately 20 feet upstream from the center of Saxe Station Road	*1,161
Maps are available for review at the Planning Department, 216 South East 4th, Pendleton, Oregon.	
Send comments to The Honorable William Hansell, Chairman, Umatilla County Board of Commissioners, 216 South East 4th, Pendleton, Oregon 97801.	
SOUTH CAROLINA	
Greenwood (city), Greenwood County	
Hard Labor Creek:	
About 1,400 feet downstream of West Alexander Street	*542
Just downstream of downstream Seaboard Coast Line Railroad	*576
Just downstream of upstream Seaboard Coast Line Railroad	*582
Just upstream of upstream Seaboard Coast Line Railroad	*590
Wilson Creek:	
At confluence of Stockman Branch	*500
Just downstream of Kateway Road	*515
Just upstream of Kateway Road	*520
Just downstream of U.S. Route 25 Bypass	*530
About 1,100 feet upstream of U.S. Route 25 Bypass	*536
Stockman Branch:	
At mouth	*500
Just downstream of East Cambridge Avenue	*530
Just upstream of East Cambridge Avenue	*535
Just upstream of New Market Road	*571
Rocky Creek:	
About 1,700 feet downstream of Haltwanger Road	*530
About 1,300 feet upstream of Grace Street	*555
Just upstream of U.S. Route 25	*571
At Seaboard Coast Line Railroad	*576
Maps available for inspection at City Hall, P.O. Box 40, Greenwood, South Carolina.	
Send comments to The Honorable Steven Brown, City Manager, City of Greenwood, City Hall, P.O. Box 40, Greenwood, South Carolina 29648.	
Greenwood County (unincorporated areas)	
Hard Labor Creek:	
About 2,100 feet downstream of U.S. Route 221	*463
Just downstream of Seaboard Coast Line Railroad	*576
Wilson Creek:	
Just upstream of Siloam Church Road	*449
Just downstream of Kateway Road	*515
Just upstream of Kateway Road	*520
Just downstream of U.S. Route 25 Bypass	*530
About 1,250 feet upstream of U.S. Route 25 Bypass	*536
Stockman Branch:	
At mouth	*500
About 0.9 mile upstream of mouth	*526
Coroniaca Creek:	
At mouth	*468
Just downstream of U.S. Route 221	*486
Just upstream of U.S. Route 221	*491
About 1.6 miles upstream of State Route 254	*548

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Rocky Creek:	
At mouth	*495
Just downstream of Center Street	*595
Just upstream of Center Street	*608

Maps available for inspection at County Courthouse, Room 203, Greenwood, South Carolina.

Send comments to The Honorable Roberth Haynie, County Administrator, Greenwood County, County Courthouse, Room 203, Greenwood, South Carolina 29646.

TENNESSEE

Covington (city), Tipton County

Town Creek:	
About 700 feet downstream of Flat Iron Road	*279
About 0.8 mile upstream of Hope Street	*294
Lateral A:	
At mouth	*282
About 500 feet upstream of College Street	*295

Maps available for inspection at the City Hall, P.O. Box 768, Covington, Tennessee.

Send comments to The Honorable R.A. Baxter, Mayor, City of Covington, City Hall, P.O. Box 768, Covington, Tennessee 38019.

Gates (town), Lauderdale County

Tisdale Creek:	
About 1,800 feet downstream of State Route 88	*305
About 2,900 feet upstream of State Route 88	*315

Maps available for inspection at the City Hall, P.O. Box 113, Gates, Tennessee

Send comments to The Honorable John Crutchfield, Mayor, Town of Gates, City Hall, P.O. Box 113, Gates, Tennessee 38037.

Halls (town), Lauderdale County

North Creek:	
About 1,100 feet downstream of Illinois Central Gulf Railroad	*289
Just upstream of Wilson Street	*306
Sumrow Creek:	
Just downstream of Illinois Central Gulf Railroad	*293
About 600 feet upstream of State Route 88	*298

Maps available for inpsection at the City Hall, Halls, Tennessee.

Send comments to The Honorable Sammie Arnold, Mayor, Town of Halls, City Hall, Halls, Tennessee 38040.

Lauderdale County (unincorporated areas)

Hyde Creek:	
At mouth	*317
Just downstream of Dam #19	*341
Just upstream of Dam #19	*354
Just downstream of Willie Paris road	*365
Cane Creek:	
About 1.1 miles downstream of State Route 371	*254
Just downstream of U.S. Route 51	*323
Just upstream of U.S. Route 51	*331
Just downstream of Dam #15	*350
Just upstream of Dam #15	*360
Just downstream of State Route 19	*367
North Creek:	
Just downstream of Gum Flat Road	*272
Just downstream of Illinois Central Gulf Railroad	*294
Sumrow Creek:	
Just upstream of County route 8216	*288
Just downstream of Smith Road	*324
Tisdale Creek:	
Just upstream of County Route 8216	*288
Just downstream of Heathcock Road	*325
Henning Creek:	
About 0.4 mile downstream of Lovelace Crossing Road	*257
Just downstream of State Route 209	*296

Maps available for inspection at the County Courthouse, Ripley, Tennessee.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

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

Send comments to The Honorable William Tucker, County Executive, Lauderdale County, County Courthouse, Ripley, Tennessee 38063.

Ripley (town), Lauderdale County

Hyde Creek:	
About 1.28 miles downstream of U.S. Route 51 Bypass	*328
About 500 feet upstream of Illinois Central Gulf Railroad	*339
Cane Creek:	
Just downstream of State Route 19	*322
About 500 feet upstream of East Webb Avenue	*338

Maps available for inspection at the City Hall, 110 South Washington, Ripley, Tennessee.

Send comments to The Honorable Vernon Gilliland, Mayor, Town of Ripley, City Hall, 110 South Washington, Ripley, Tennessee 38063.

TEXAS

Double Oak (town) Denton County

Timber Creek:	
Approximately 40 feet downstream of Forest Lane	*625
Approximately 700 feet upstream of Woodland Trail Drive	*629

Maps available for inspection at the Town Hall, 1100 Cross Timbers Road, Double Oak, Texas.

Send comments to The Honorable Rober Greer, Jr., Mayor of the Town of Double Oak, Denton County, Town Hall, P.O. Box 1396, Lewisville, Texas 75065.

Montgomery County

White Oak Creek:	
At downstream County boundary	*65
Upstream side of Southern Pacific Railroad	*87
Upstream side of Rolling Hills Drive (downstream crossing)	*116
Approximately 600 feet upstream of FM 1314	*129
Silverdale Creek:	
Approximately 3,800 feet downstream of southbound Interstate Route 45 and State Route 75	*128
Upstream side of Missouri Pacific Railroad	*136
At upstream Corporate limits	*160
Grand Lake Creek: At upstream corporate limits	*158

Maps available for inspection at 326½ Main Street, Conroe, Texas.

Send comments to The Honorable Jimmie C. Edwards, Montgomery County Judge, Montgomery County Courthouse, Conroe, Texas 77301.

Willow Park (city), Parker County

Squaw Creek:	
Approximately 750 feet downstream of Sam Bass Road	*840
At downstream side of Squaw Creek Reservoir	*845
Stream CF(WF)-1:	
At downstream corporate limits	*841
At confluence with Stream CF(WP)-1A	*876
At upstream side of Ranch House Road	*906
At upstream side of Survey Lane	*937
At downstream side of Valley Court (extended)	*953
Stream CF(WP)-1A:	
At confluence with Stream CF(WP)-1	*876
At upstream side of Lariat Court (extended)	*893
At upstream side of Ranch House Road	*917

Maps available for inspection at the City Hall, 101 Stage Coach Trail, Willow Park, Texas.

Send comments to The Honorable M.T. Philpot, Mayor of the City of Willow Park, Parker County, 101 Stage Coach Trail, Willow Park, Texas 76086.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
VIRGINIA	
Mathews County (unincorporated area)	
Piankatank River:	
Shoreline at Pond Point	*11
Shoreline at State Route 3 bridge (Twigg Bridge)	*7
Chesapeake Bay:	
Shoreline at Mill Point	*11
Intersection of State Route 611 and State Route 613	*8
Approximately 950 feet east of intersection of State Route 14 and State Route 606	*7
Mobjack Bay:	
Shoreline at Dutchman Point	*11
Approximately 0.5 mile north of Minter Point	*7

Maps available for inspection at the County Administrator's Office, Mathews, Virginia.

Send comments to The Honorable Frank Pleva, Mathews County Administrator, P.O. Box 868, Mathews, Virginia 23109.

WEST VIRGINIA

Putnam County

Kanawha River:	
Approximately .28 mile downstream of downstream County boundary	*572
At State Route 34	*579
At upstream County boundary	*586
Manila Creek:	
At confluence of Heizer Creek	*583
Approximately 140 feet upstream of County Route 5	*585
Heizer Creek:	
At confluence with Pocatalico River	*583
Upstream side of Heizer Creek Road	*632
Upstream side of County Route 34/5	*663
Approximately .89 mile upstream of County Route 34/5	*693
Approximately 1.8 miles upstream of County Route 34/5	*731
Pocatalico River:	
At confluence of Kanawha River	*583
Approximately 450 feet upstream of confluence of Heizer Creek	*583
Little Hurricane Creek:	
At confluence with Kanawha River	*576
Upstream side of County Route 29-4	*581
Approximately 100 feet upstream of County Route 42	*652
Lick Run:	
At confluence with Little Hurricane Creek	*652
Approximately 140 feet upstream of Blue Lick Road	*700
Hurricane Creek:	
At confluence with Kanawha River	*576
Upstream side of County Route 19	*585
Upstream side of Interstate 64	*619
Approximately 180 feet upstream of State Route 34	*647
Five and Twentymile Creek:	
At confluence with Kanawha River	*574
Approximately 80 feet upstream of Stave Branch Road	*574
Plantation Creek:	
Confluence with Kanawha River	*574
Approximately 0.87 mile upstream of U.S. Route 35	*592
Eighteenmile Creek:	
At confluence with Kanawha River	*573
Upstream side of County Route 10	*573
Approximately 6.9 miles upstream of confluence with Kanawha River	*577
Approximately 9.7 miles upstream of confluence with Kanawha River	*581
Cross Creek:	
At downstream County boundary	*573
Approximately 110 feet upstream of County boundary	*573

Maps available for inspection at the Putnam County Courthouse, Winfield, West Virginia

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Send comments to The Honorable Keith K. Davis, Putnam County Administrator, P.O. Box 149, Winfield, West Virginia 25213.	
WISCONSIN	
New Berlin (city), Waukesha County	
Calhoun Creek:	
Just upstream of College Avenue	*816
About 150 feet upstream of College Avenue	*821
Just downstream of State Highway 15	*875
Dakota Street Tributary:	
At mouth	*786
About 1,500 feet upstream of mouth	*805
Deer Creek:	
Just upstream of Greenfield Avenue	*840
About 1.1 miles upstream of National Avenue	*873
Root River:	
Just upstream of South 124th Street	*761
About 1.3 miles upstream of South 124th Street	*821
South Branch Underwood Creek.:	
About 0.34 mile downstream of Elm Grove Road	*761
About 0.46 mile upstream of Arcadian Drive	*826
South 130th Street Tributary:	
At mouth	*764
About 0.33 mile upstream of South 126th Street	*783
West Branch Root River:	
Just upstream of South 124th Street	*751
Just upstream of Sunny Slope Road	*827
Poplar Creek:	
About 0.36 mile downstream of Arcadian Drive	*830
Just downstream of Cleveland Avenue	*851
Just upstream of Cleveland Avenue	*859
Just downstream of Coffee Road	*868
Upper Kelly Lake Tributary:	
At mouth	*808
About 1,000 feet upstream of Radisson Drive	*855
Upper Kelly Lake: Shoreline	*808
Maps available for inspection at the City Planner's Office, City Hall, 16000 West National Avenue, New Berlin, Wisconsin.	
Send comments to The Honorable Timothy K. Tully, Mayor of New Berlin, City Hall, 16000 West National Avenue, New Berlin, Wisconsin 53151.	

Issued: June 23, 1986.

Francis V. Reilly,

Deputy Administrator, Federal Insurance Administration.

[FR Doc. 86-15024 Filed 7-2-86; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 96

Block Grant Programs

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services proposes to amend the regulation on block grant programs to implement legislation recently enacted by Congress, including Pub. L. 99-117, the Health Services Amendments of 1985, Pub. L. 98-509, the Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984, Pub. L. 98-555, the Preventive Health Amendments of 1984, and Pub. L. 98-558, the Human Services Reauthorization Act of 1984. In addition, the Department proposes to clarify certain requirements regarding audits and reporting under the block grant programs.

DATE: Comments must be submitted by September 2, 1986.

ADDRESS: Send comments to: Robert C. Raymond, Deputy Director, Program Systems, Office of the Secretary/Assistant Secretary for Planning and Evaluation, Room 447-D, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The comments received in response to this notice may be inspected or reviewed at the same address, Monday through Friday, between 8:00 am and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Robert C. Raymond, (202) 245-7316.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1981 established seven block grants to be administered by the Department of Health and Human Services. Interim final regulations to implement the block grants were published in the **Federal Register** on October 1, 1981 (46 FR 48582). Based upon the Department's review of the comments on the interim final regulations, final regulations were issued on July 6, 1982 (47 FR 29472). These rules remain in effect. However, recent legislation has changed some of the provisions for the block grants. Certain of these provisions require changes in the regulations for the block grants. Information relating to the block grants and proposed changes are discussed below.

Eligible Entities Under the Community Services Block Grant

The definition of "eligible entity" contained in section 673 (1) of the Omnibus Budget Reconciliation Act of 1981 has been expanded by section 202 of the Human Services Reauthorization Act of 1984 to include any organization to which a state that applied for and received a waiver from the Secretary under the Appropriations Act of 1984, Pub. L. 98-139, made a grant under the Community Services Block Grant Act in fiscal year 1984. Thus, the organizations or political subdivisions funded by the states of Colorado, Wyoming and Utah in fiscal year 1984 based on a waiver from the Secretary are now recognized as "eligible entities."

Section 202 also defines circumstances under which the Governor of a state may designate an organization or a political subdivision to serve a new area and thus qualify as an "eligible entity."

Earmarks and Other Funding Limitations Under the Alcohol and Drug Abuse and Mental Health Services Block Grant ("ADMS")

Title XIX, Part B of the Public Health Service Act now has eight earmarks—percentage restrictions or requirements—that govern state expenditure of funds under the alcohol and drug abuse and mental health services block grants. These are as follows:

1. Section 1915(d) prohibits a state from using more than ten percent of the amount it is paid under the block grant for the cost of administering the block grant.

2. Section 1916(c)(6)(A) requires a state to use certain proportions of its nondiscretionary funds allocated under the fiscal year 1982 block grant for mental health activities and for substance abuse activities.

3. Section 1916(c)(6)(B) requires a state to divide at least 75 percent of its block grant allotment for fiscal years beginning after fiscal year 1984 into the percentages specified in section 1916(c)(6)(A), with the remainder available for discretionary use.

4. Section 1916(c)(7)(A) requires that, of the ADMS block grant funds required to be made available under 1916(c)(6), at least 35 percent shall be used for programs and activities relating to alcoholism and alcohol abuse.

5. Section 1916(c)(7)(B) requires that, of the ADMS block grant funds required to be made available by a state under 1916(c)(6), at least 35 percent shall be used for programs and activities relating to drug abuse.

6. Section 1916(c)(8) requires that, of the funds to be used by a state for alcohol and drug abuse activities, at least 20 percent shall be used for prevention and early intervention programs designed to discourage the abuse of alcohol or drugs, or both.

7. Section 1916(c)(14) requires a state to use not less than three percent in fiscal year 1985 and not less than five percent in any other fiscal year of its total block grant allotment to initiate and provide new or expanded alcohol and drug abuse services for women.

8. Section 1916(c)(15) requires that, of the amounts to be used in any fiscal year for mental health activities, a state shall use at least ten percent of such funds to initiate and provide (A) in fiscal year 1985 new comprehensive community mental health services for

underserved areas or for underserved populations, with special emphasis on new mental health services for severely disturbed children and adolescents and (B) in any other fiscal year new or expanded services as set out in clause (A) above.

In addition to the limitations set out above, section 1915(c) allows a state to transfer not more than seven percent of its block grant allotment out of the block for the support of other activities specified by law. Not more than three percent of the allotment can be transferred in the first three quarters of a fiscal year.

Changes in Contact Persons for Block Grants

The contact persons for the block grants are as follows:

Community services:

Spencer Lott, Director, Office of State and Project Assistance, Office of Community Services, 200 Independence Ave., SW., Washington, DC 20201, (202) 653–5675.

Alcohol and drug abuse and mental health services:

For information and assistance related to program matters: Gary L. Palsgrove, Deputy Director, Division of Intergovernmental Activities, Alcohol, Drug Abuse and Mental Health Administration, 5600 Fishers Lane, Room 13–C–05, Rockville, Maryland 20857 (301) 443–4564. Requests for programmatic technical assistance will be referred to the Institutes, as appropriate.

For information and assistance related to fiscal and grants management matters: Ernestine Taylor Lanahan, Grants Management Officer, Division of Grants and Contracts Management, Alcohol, Drug Abuse and Mental Health Administration, 5600 Fishers Lane, Room 13–C–20, Rockville, Maryland 20857 (301) 443–3334.

Preventive health and health services:

For information and assistance related to program matters: Jerry Spyke, Senior Public Health Advisor, Center for Preventive Services, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 329-1804.

For information and assistance related to fiscal matters and grants management: Leo A. Sanders, Chief, Grants Management Branch, Centers for Disease Control, 355 E. Paces Ferry Road, NW., Room 107A, Atlanta, Georgia 30305 (404) 262–6576.

Maternal and child health services and primary care:

James Corrigan, Associate Director, Bureau of Community Health Services, 5600 Fishers Lane, Room 7–05, Rockville, Maryland 20857 (301) 443–2380.

Social services:

Janet Hartnett, Office of Policy and Legislation, Human Development Services, Room 318 E, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201 (202) 245–2892.

For information and assistance related to fiscal matters and grants management: David Ramos, 472–3243.

Low-income home energy assistance:

Norman Thompson, Director, Office of Energy Assistance, Transpoint Building, 2100 2nd Street, SW., Washington, DC 20201 (202) 245–2030.

Section-by-Section Analysis of Proposed Changes in the Regulations

Section 96.14 Time period for obligation and expenditure of grant funds.

Prior to passage of the Human Services Reauthorization Act (Pub. L. 98–558), states receiving funds to administer the low-income home energy assistance program were permitted to hold available for obligation in the succeeding fiscal year up to 25% of their allotment. Beginning with fiscal year 1985 funds, only 15% of funds payable to a state for a fiscal year and not transferred to another block grant may be held available for obligation in the following fiscal year. The amendments in Pub. L. 98–558 specify that funds payable to a state are those funds remaining after any portion of the state's allotment has been set aside for direct grants to applicant Indian tribes and tribal organizations. Section 96.14, which addresses the time period for the use of funds, has been changed accordingly.

Section 96.15 Waivers.

In accordance with Pub. L. 98–558, the Secretary's authority to waive application assurances for the low-income home energy assistance program is repealed, effective at the beginning of fiscal year 1986.

Section 96.17 Annual and biennial reports.

We are proposing to require the annual or biennial post-expenditure reports (except those for the low-income home energy assistance program and the community services block grant) to be made public and transmitted to the Secretary within six months of the end of the block grant reporting periods. (Submission of reports for the low-income home energy assistance program is governed by an existing regulation published at 45 CFR 96–82. No separate annual or biennial report is reuqired for the community services block grant. Rather, the report on state activities and expenditures is included as a part of the application for the succeeding year's funding.)

Annual post-expenditure reports are required for the health block grants: (preventive health and health services, 42 U.S.C. 300w–5(a)(1); alcohol and drug abuse and mental health services (42 U.S.C. 300x–5(a)(1)), primary care (42 U.S.C. 300y–7(a)(1)), and maternal and child health services (42 U.S.C. 706(a)(1)). A report at least every two years is required for the social services block grant (42 U.S.C. 1397e(a)). Although these statutory reporting requirements do not expressly require that the reports be made public and transmitted within a particular period of time, a requirements that these steps be taken within a reasonable period of time is implicit in those provisions. The reports are intended to provide information on the use of block grant funds for use by the states, their citizens and legislatures, and by the Department and Congress. The reports can only serve these functions if they are prepared, made public, and transmitted in a timely fashion.

The proposed six-month deadline would satisfy several criteria relating to these uses. First, it responds to state requests for a clearly specified due date for these reports. Second, it affords the state adequate opportunity to prepare the reports while ensuring that the reports are submitted in a timely fashion. Third, for most block grant programs, it ensures that the public will be able to review a description of state block grant activities before the state finalizes plans for a subsequent year's program. Finally, it would enable the Department to consolidate state information and report to Congress promptly. It should be noted that the proposed regulation does not alter the current policy of allowing the states to define the form and content of the reports.

Section 96.30 Fiscal and administrative requirements.

Existing paragraph (b) of this section governs block grant audits. The proposed regulation would remove that paragraph and transfer its text to a new § 96.31—Audits.

Section 96.31 Audits.

The Single Audit Act, Pub. L. 98–502, requires units of state and local government to conduct a single audit of all federal financial assistance received in a fiscal year. By the express terms of the Act, these "single audits" are to be conducted in lieu of the separate

program audits required by other provisions of federal law. Consequently, the Single Audit Act generally overrides the separate audit requirements of the block grant statutes.

The Department has concluded that the Single Audit Act takes precedence over all the block grant audit requirements despite the fact that some of the separate block grant audit requirements were amended several days after the Single Audit Act was enacted. Although the general rule of statutory construction is that the more recent of two conflicting statutes controls, Congress gave no indication of an intent to work a limited repeal of the Single Audit Act by carving out an exception for several block grants. In light of the strong presumption against implied repeals and the manifest congressional intent to impose a single, uniform and consistent audit requirement on recipients of federal funds, the Department has determined that the Single Audit Act overrides the separate audit requirements in the block grant statutes.

There are two limitations on the applicability of the Single Audit Act. First, the Single Audit Act does not apply to any recipient's fiscal year beginning before January 1, 1985. Second, a recipient that receives between $25,000 and $100,000 in total federal financial assistance from any or all sources has the option of either conduction a single audit or conducting an audit in accordance with the terms of the specific federal assistance program to be audited. (Any state, local government, or Indian tribe that receives less than $25,000 in total federal financial assistance from any or all sources is, under the terms of the Single Audit Act, exempt from federal audit requirements.)

The proposed regulations set out requirements for audits conducted under the Single Audit Act and under the separate block grant programs. Single audits must be conducted in accordance with the Single Audit Act as interpreted by the Office of Management and Budget in Circular A–128, published at 50 FR 19119 (May 6, 1985). Audits not performed under the Single Audit Act must be conducted under standards which are consistent with the Comptroller General's standards for the audit of governmental organizations and programs.

The proposed regulation would also establish reporting deadlines for audits that are conducted under some authority other than the Single Audit Act. While these dates are not expressly established by the relevant statutory provisions, a reasonable audit report deadlines is implicit in the need to ensure timely assimilation of audit findings. The submission of reports for Single Audit Act audits as discussed in OMB Circular A–128, is required within one year of the end of the audit period. We propose to require the same submission date for the audits that are conducted under an authority other than Single Audit Act.

Section 96.32 Financial settlement.

The proposed regulation refers to the statutory requirement that states repay to the Deparment funds that have been determined by the audit process and audit resoslution to have been expended improperly. Each block grant program is subject to a statutory provision that requires repayment of funds that have not been expended in accordance with the applicable block grant provisions: (Community services, 42 U.S.C. 9904(g), preventive health and health services, 42 U.S.C. 300w–5(b)(3); alcohol and drug abuse and mental health services, 42 U.S.C. 300x–5(b)(3), primary care, 42 U.S.C. 300y–7(b)(3); maternal and child health services (42 U.S.C. 706(b)(2), social services 42 U.S.C. 1397e(b); low-income home energy assistance, 42 U.S.C. 8–624(g)). If an audit uncovers improper expenditures, the state is obligated to repay the Department. If repayment is not made voluntarily, the Department may obtain recovery through offset against other funds due the state or by other collection methods described in 45 CFR Part 30.

Section 96.33 Referral of cases to the Inspector General.

A new section has been added to identify the Regional Office of Investigations (of the Department's Office of the Inspector General) as the agency to which states and tribes should report information relating to possible fraud or other offenses against the United States.

Section 96.42 General procedures and requirements.

Current regulations at 45 CFR 96.42(b) set a deadline of September 1 for tribes to submit applications for direct grants. The deadline was imposed because states are responsible for serving triabal households if the tribe does not apply for a direct grant, and states need an early indication of which tribal households they must plan to serve. On the other hand, if the state has no objection to having additional funds set aside for a tribal application submitted after September 1, we have no objection. We have amended our regulations to allow explicitly for such circumstances.

Section 96.44 Community services.

Congress has amended section 675(c)(2)(B) of the community services block grant to permit states to expend the greater of $55,000 or 5% of the state's allotment on administrative expenses at the state level. The optional $55,000 ceiling, however, would, if applied, allow many tribes and tribal organizations to expend a disproportionate amout on administrative costs. As Congress clearly intended to cap administrative expenditures at a relatively low level, the Department has concluded, in accordance with § 96.42(a), that the $55,000 optional ceiling on administrative costs is not a requirement that is relevant to Indian tribes or tribal organizations. The proposed regulation specifies this interpretation.

Section 96.50 Complaints.

This proposed change in this provision indicates that complaints regarding the health block grants should be submitted to either the Assistant Secretary for Health or to the administrator of the office responsible for administering the block grant.

Section 96.51(a) Hearings.

This proposed revision clarifies the instances in which a state is entitled to a hearing on repayment of block grant funds. The proposed revision states that no opportunity for a hearing will be offered if the state agrees that repayment of block grant funds is required. This is in accordance with the clearly established principle that hearings are intended only to provide an opportunity to resolve disputed issues of law or fact.

Subpart H—Low-Income Home Energy Assistance Program ("LIHEAP")

Section 96.81 Reallotment report.

Under the low-income home energy assistance program, the Secretary is to reallot funds unused at the end of each year. States may request that a portion of their unused funds not be realloted, but rather be held available for use in the next fiscal year. Section 96.81 specifies that a report be submitted by grantees identifying funds to be held available for use in the succeeding fiscal year and funds which will be unspent and available for reallotment. Section 606(a) of Pub. L. 98–558 requires grantees to explain why funds were not expended during the fiscal year and to describe the types of assistance to be provided with those funds in the following fiscal year. Therefore, we are

proposing to revise the reporting requirement at 96.81 to require that states provide this information as part of their report due August 1 of each year.

Section 606(b)(1)(A) of Pub. L. 98–558 reduces the percntage of funds a state may request be held available for the subsequent fiscal year from 25% to 15% of those funds payable to the state and not transferred. This limit applies beginning with fiscal year 1985 funds held available for fiscal year 1986.

Section 96.82 Required report.

Current regulations at § 96.82 require grantees to submit an end-of-year report stating the total number of households assisted by income level. The proposed revision to this section states that grantees must also report the number of households that contain elderly or handicapped members.

Section 96.83 Direct payments to SSI recipients.

We are proposing elimination of this section which allows states to request that the federal government make state LIHEAP payments to individuals who are also recipients of the federal Supplemental Security Income program. The statutory provision allowing of this method of papyment was repealed by section 603(c) of Pub. L. 98–558.

Section 96.86 State plans.

Section 605(c) of Pub. L. 98–558 amended the LIHEAP statute to require states to expend LIHEAP funds in accordance with the state plan submitted as part of the state's application for funding. Consequently, the LIHEAP state plan, as well as the statute and regulations now governs the state's use of funds and provides standards of compliance. HHS, in exercising its statutory oversight and enforcement activities, and the state's auditors, in carrying out their audit functions, must be able to ascertain the standard of compliance contained in the state plan for each statutory provision and for each type of assistance provided by the state under its LIHEAP program. Our review of state plans and programs over the past four years has indicated that many states have misinterpreted the statutory requirement in section 2605(c)(1) that the state describe how it will carry out the assurances in section 2605(b) of Pub. L. 97–35, as amended.

The proposed regulation clarifies the statutory requirement that all of the assurances in section 2605(b) apply to each form of assistance provided by the state, e.g., heating assistance, cooling assistance, crisis assistance and low-cost residential weatherization and energy-related home repairs. Further, the proposed regulation clarifies that the state plan must describe how the state will carry out each of the assurances for each form of assistance provided (the assurance in section 2605(b)(15) is an exception to this rule because that assurance clearly applies only to energy crisis intervention activities performed by the state.)

Section 96.87 Prevention of waste, fraud and abuse.

Section 605(a)(9) of Pub. L. 98–558 requires that the Secretary issue regulations to prevent waste, fraud and abuse in the LIHEAP program. We are proposing to address this requirement in a new provision in subpart H. The proposed subsection 96.87 would require states and Indian tribes to have in place systems and procedures for preventing, detecting and correcting instances of waste, fraud, and abuse in the low-income home energy assistance program. Under the proposed regulation, these systems and procedures would be required to address waste, fraud, and abuse of vendors, clients, and administering agencies. We would review these systems and procedures in the course of the compliance reviews conducted by the Department under 42 U.S.C. 8627. Examples of activities states may pursue to prevent, detect, and correct instances of waste, fraud, and abuse, include appropriate warning statements on beneficiary applications and vendor vouchers, computer screens, audits, and memoranda of understanding with investigative organizations.

Section 96.88 Limitations on LIHEAP administrative costs.

(a) *Costs of planning and administration.* The statute for the low-income home energy assistance program includes an express limitation on the percent of funds that can be used for planning and administering the program. In our final rules of July 6, 1982, we declined to define administrative costs for the block grants. Rather, in accordance with the intent of the block grant statutes, the regulation allows states to determine in the first instance which expenses constitute administrative costs chargeable to block grant funds.

Since that time, we have learned of misunderstandings on the part of some states and tribes as to whether the costs of planning and administering incurred by subgrantees, local administering agencies and contractors must be considered in assessing compliance with the statutory limits on administrative costs. Some states and tribes may have applied the limitation on administrative costs only to those costs incurred at the state or central tribal level. In these cases, some or all of the administrative costs incurred by subgrantees or contractors appear not to have been considered in determining compliance with the statutory limitation.

We believe Congress intended that, in determining compliance with the percentage limitation on administrative costs, a state or tribe include the planning and administrative costs associated with carrying out governmental functions normally associated with administration of a public assistance program, whether the function is performed by a state agency or by a subgrantee, subrecipient or contractor of the state. These functions include but are not limited to such activities as taking applications, determining eligibility and benefits, and monitoring the assistance provided.

Accordingly, we have added a new section to Subpart H of our regulations to make clear that the total costs of these governmental functions, whether incurred by the state or by a subgrantee, local administering agency, or contractor of the state, must be considered in determining compliance with the statutory limitations.

(b) *Administrative costs of territories and Indian tribes.* Experience has shown that each grantee incurs certain basic administrative costs in developing and implementing a LIHEAP program. The statute requires that each state limit these planning and administrative expenditures to no more than 10 percent of the funds payable to it and not transferred for use under other block grants. As the LIHEAP allotments to the states are substantial, the 10 percent ceiling on planning and administrative costs allows each state sufficient funds for these purposes.

Some tribes and territories, however, receive relatively small LIHEAP allotments and the flat 10 percent limitation on planning and administrative expenditures may not be sufficient to cover the basic costs of developing and implementing their program. Accordingly, we have concluded that the 10 percent limitation on planning and administrative expenditures is not appropriate to all tribal grantees. *See* 45 CFR 96.42(a). Similarly, with respect to certain territorial grantees, we have concluded that a different ceiling on planning and administrative expenditures would, pursuant to 42 U.S.C. 8623(b)(2), be consistent with the statutory limitation on planning and administrative expenditures. Consequently, we are proposing to modify the limitations on

planning and administrative expenditures for smaller tribal and territorial grantees. For grantees whose funds payable are less than or equal to $20,000, the limitation on the cost of planning and administering the program would be 20 percent. For grantees whose funds payable are over $20,000 would remain at 10 percent.

The revised limit is based upon estimates for costs associated with audit, personnel, plan development, and overhead. Audit costs considered the cost of an audit apportioned among federal programs audited by a tribe under the Single Audit Act, allowing a minimum of $300. Personnel costs were based on two hours of processing time per application at a salary of $7 per hour. A figure equal to fifteen percent of personnel costs was allowed for overhead and costs associated with completing and submitting the grant application.

We believe this amendment provides the increased flexibility necessary for small grantees to administer their LIHEAP programs. Nevertheless, we encourage interested parties to provide information or recommendations on other formulations of this regulatory provision that may better achieve its purpose.

Subpart I–Community Services

Section 96.92 Termination of funding.

Section 675 (c)(11) of the Community Services Block Grant Act, as added by section 203(a)(3) of Pub. L. 98–558, requires a state to provide assurances that it will not end present or future funding of certain entities unless, after issuing notice of the proposed termination and affording an opportunity for a hearing on the record, the state determines that there is cause for terminating funding. Section 676A of the Community Service Block Grant Act, as added by section 203(d) of Pub. L. 98–558, further provides that upon request, the Secretary will review the record of the state's decision to terminate funding. If such a review is requested the state's decision cannot take effect unless and until the Secretary confirms the state's finding of cause for terminating funding. The grantee has 30 days in which to request a review. The proposed regulation sets out these requirements and indicates that the Department will, upon request for a review of the state's determination, review the hearing record and confirm or reject the state's finding of cause for termination within 90 days of receipt of the request.

Subpart L—Alcohol and Drug Abuse and Mental Health Services Block Grant

Section 96.111 Earmarks.

Pub. L. 98–509 added, and Pub. L. 99–117 subsequently modified two new earmark requirement to the alcohol and drug abuse and mental health services block grant. Section 1916(c)(14) requires states to use in fiscal year 1985 not less than three percent and in any other fiscal year not less than five percent of its total block grant allotment to initiate and provide new or expanded alchohol and drug abuse services for women. Section 1916(c)(15) requires that, of the amounts to be used in any fiscal year for mental health activities, a state shall use at least 10 percent of such funds to initiate and provide (a) in fiscal year 1985 new comprehensive community mental health services for underserved areas or for underserved populations, with special emphasis on new mental health services for severely disturbed children and abolescents and (b) in any other fiscal year new or expanded services as set out in clause (a) above.

The conference report for Pub. L. 98–509 makes clear that each state should target earmarked services based on local needs. The legislative history of Pub. L. 99–117 expresses congressional intent to "allow the states somewhat more flexibility by allowing them to create new treatment opportunities through expansion of existing services as well as through the initiation of entirely new ones."

Consistent with the intent of Congress to allow the states flexibility in implementation of the law, the Department has determined that the baseline for deciding whether services are "new" or "expanded".

Using fiscal year 1984 as a baseline for determining whether services are "new" or "expanded" avoids cumulating the earmarks in fiscal years after fiscal year 1985. The negative aspects of such a cumulative effect are that over time an excessively large portion of a state's total allotment would be used to satisfy the two earmarks, thus significantly negating the extensive planning and public participation process the statute requires states to undertake in deciding how to spend their allotments and diminishing the state's flexibility in implementing the law.

Effective Dates

Legislative changes make some regulatory provisions effective beginning with fiscal year 1985, and others beginning with fiscal year 1986. Provisions regarding the required end-of-year report (96.82), and elimination of the direct payment to SSI households (96.83) are effective for fiscal year 1985. Regulations regarding reallotment reports (§ 96.81) and the time period for obligation and expenditure of grant funds (§ 96.14) take effect for funds held available from fiscal year 1985 for use in fiscal year 1986. Provisions regarding waivers for low-income home energy assistance (§ 96.15), state plans (§ 96.86), and waste, fraud and abuse (§ 96.87) and LIHEAP administration (§ 96.88) are effective for fiscal year 1986.

Technical Corrections

The proposed revision of § 96.2 would indicate that, for each block grant program, the regulations apply to any entity defined as a "state" by the applicable block grant statutory provisions. This revision is intended to make clear that references to "states" apply to eligible territories and other non-state jurisdictions.

The proposed revision of § 96.16, which discusses the applicability of Title XVII of the Omnibus Budget Reconciliation Act of 1981 to the various block grants, would insert a reference to the preventive health and health services block grant to correct an inadvertent omission in the current regulation. In addition, it would add appropriate citations to the codification of the Act in the United States Code.

These proposed rules correct two citations in § 96.46(c) relating to funding applications from Indian tribes under the alcohol and drug abuse and mental health services block grant.

Executive Order 12291

The proposed regulation implements a series of legislative changes which are minor or technical in nature. None will involve a substantial cost. Therefore, this is not a major rule under Executive Order 12291.

Regulatory Flexibility Act

The Department of Health and Human Services certifies that this regulation will have no significant impact on a substantial number of small entities, small businesses small organizational units, and small governmental jurisdictions. The proposed rules would principally affect state administration of block grant funds. States are not "small entities" for purposes of the Act, and the regulation would not have any substantial or significant effects on other entities.

List of Subjects in 45 CFR Part 96

Administrative practice and procedure, Aged, Alcoholism, Child welfare, Community action program, Drug abuse, Energy, Grant programs-

energy, Grant programs-health, Grant programs-Indians, Grant programs-social programs, Health, Indians, Investigations, Low and moderate income housing, Maternal and child health, Mental health programs, Public health, Reporting and recordkeeping requirements, Social security.

Proposed Rule

For the reasons set forth in the preamble, Part 96 of Title 45 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 96 is revised to read as follows:

Authority: Pub. L. 97–35; Pub. L. 98–509; Pub. L. 98–555; Pub. L. 98–558; Pub. L. 99–117.

1A. In § 96.2, by adding a new paragraph (d) to read as follows:

§ 96.2 Definitions.

* * * * *

(d) "State" includes, as appropriate with respect to each block grant, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

* * * * *

2. By revising paragraph (a) introductory text, and (a)(2) of § 96.14 to read as follows:

§ 96.14 Time period for obligation and expenditure of grant funds.

(a) *Obligations.* Amounts unobligated by the state at the end of the fiscal year in which they were first allotted shall remain available for obligation during the succeeding fiscal year for all block grants except:

* * * * *

(2) *Low-income home energy assistance.* Amounts are available only in accordance with 42 U.S.C. 8626(b)(2)(B). From allotments for fiscal year 1982 through fiscal year 1984, a maximum of 25 percent may be held available for the following fiscal year. Beginning with fiscal year 1985, a maximum of 15 percent of the amount payable to a state and not transferred to another block grant according to 42 U.S.C. 8623(f) may be held available for the next fiscal year. No funds may be obligated after the end of the fiscal year following the year for which they were allotted.

* * * * *

3. By revising § 96.15 to read as follows:

§ 96.15 Waivers.

Beginning with fiscal year 1986, the Secretary's authority to waive the provisions of 42 U.S.C. 8624(b) under the low-income home energy assistance program is repealed.

4. Section 96.16 is revised to read as follows:

§ 96.16 Applicability of Title XVII of the Reconciliation Act (31 U.S.C. 7301–7305).

This section interprets the applicability of the general provisions governing block grants set forth in Title XVII of the Reconciliation Act (31 U.S.C. 7301–7305):

(a) Except as otherwise provided in this section or unless inconsistent with provisions in the individual block grant statutes; 31 U.S.C. 7301–7305 apply to the community services, preventive health and health services, and alcohol and drug abuse and mental health services block grants.

(b) The requirement in 31 U.S.C. 7303(b) relating to public hearings does not apply to any of the block grants governed by this part. Instead, the provisions in the individual block grant statutes apply.

(c) The primary care and maternal and child health services block grants are not subject to any requirements of 31 U.S.C. 7301–7305.

(d) The social services and low-income home energy assistance programs are subject only to 31 U.S.C. 7304.

(e) The audit provisions of 31 U.S.C. 7305 have, in most cases, been overridden by the Single Audit Act, Pub. L. 98–502, 31 U.S.C. 75, et seq., and do not apply to the block grants. Pursuant to § 96.31(b)(2), certain entities may, however, elect to conduct audits under the block grant audit provisions. For entities making this election, the provisions of 31 U.S.C. 7305 apply to the community services block grant.

(f) The applicability of 31 U.S.C. 7303(a) relating to the contents of a report on proposed uses of funds is specified in § 96.10.

5. By adding a new § 96.17 to read as follows: § 96.17 Annual and Biennial Reporting Deadlines.

Except for the low-income home energy assistance program activity reports, a state must make public and submit to the Department each annual and biennial post-expenditure report required by statute within six months after the end of the period covered by the report. These reports are required annually for preventive health and health services (42 U.S.C. 300w–5(a)(1)), alcohol and drug abuse and mental health services (42 U.S.C. 300x–5(a)(1)), primary care (42 U.S.C. 300y–7(a)(1)), and maternal and child health services (42 U.S.C. 706(a)(1)), and biennially for the social services block grant (42 U.S.C. 1397e(a)). See § 96.82 for requirements governing the submission of activity reports for the low-income home energy assistance program.

§ 96.30 [Amended]

6. By removing paragraph (b) and the designation (a) from § 96.30.

7. By adding new § 96.31 to Subpart C to read as follows:

§ 96.31 Audits.

(a) *Fiscal periods beginning before January 1, 1985.* All block grant funds received in any state fiscal year beginning before January 1, 1985, are subject to the audit requirements set forth in each of the respective block grant statutes. These audits must be conducted under standards that are consistent with Comptroller General's standards for the audit of governmental organizations, programs, activities, and functions. Reports on the audit results for all fiscal years subject to this paragraph must be submitted to the Department within one year of the close of the last state fiscal year beginning before January 1, 1985.

(b) *Fiscal periods beginning on or after January 1, 1985.* (1) Each state, local government, and Indian tribe or tribal organization that receives $100,000 or more (during the grantee's fiscal year) in all types of federal financial assistance provided through the block grants and all other federal programs must conduct an audit in accordance with the Single Audit Act, Pub. L. 98–502, 31 U.S.C. 75 *et seq.* The Office of Management and Budget has implemented the Single Audit Act through publication of OMB Circular A–128, which is set out in full at 45 CFR Part 74, Appendix J of the Department's Grant Administration Regulations. Grantees must comply with the requirements of Circular A–128.

(2) Each state, local government, or Indian Tribe or tribal organization that receives at least $25,000 and less than $100,000 in total federal fiancial assistance from any source must, at its option, audit block grant funds under either the Single Audit Act or the separate audit requirements set out in each respective block grant statute (or, in the case of the community services block grant, the requirements in 31 U.S.C. 7305). Any audit that is conducted under the block grant audit requirements must be conducted in accordance with standards that are consistent with the Comptroller General's standards for the audit of governmental organizations, programs, activities, and functions. Reports on the results of any such audit must be submitted to the Department

within one year of the close of the audited fiscal period.

(3) Reports of audits conducted under the Single Audit Act shall, if required to be submitted to the Department by OMB Circular A–128, be submitted to the Regional Inspector General for Audit responsible for the federal region in which the block grant recipient is located.

8. By adding new § 96.32 to Subpart C to read as follows:

§ 96.32 Financial settlement.

The state must repay to the Department amounts found after audit resolution to have been expended improperly. In the event that repayment is not made voluntarily, the Department will undertake recovery.

9. By adding new § 96.33 to read as follows:

§ 96.33 Referral of cases to the Inspector General.

State or tribal officials who have information indicating the commission or potential commission of fraud or other offenses against the United States involving block grant funds should promptly provide the information to the appropriate Regional Office of Investigations of the Department's Office of the Inspector General.

10. By revising paragraph (e) of § 96.42 to read as follows:

§ 96.42 General procedures and requirements.

* * * * *

(e) Beginning with fiscal year 1983, any request by an Indian tribe or tribal organization for direct funding by the Secretary must be submitted to the Secretary, together with the required application and related materials, by September 1 preceding the federal fiscal year for which funds are sought. A separate application is required for each block grant. After the September 1 deadline, tribal applications will be accepted only with the concurrence of the state (or states) in which the tribe or tribal organization is located.

* * * * *

11. By adding a new paragraph (f) to section 96.44 to read as follows:

§ 96.44 Community Services.

* * * * *

(f) An Indian tribe or tribal organization may not expend more than five percent of its allotment under section 674 of the Reconciliation Act (42 U.S.C. 9903) for administrative expenses.

* * * * *

12. By revising paragraph (c) of § 96.46 to read as follows:

§ 96.46 Alcohol and drug abuse and mental health services.

* * * * *

(c) An Indian tribe or tribal organization is not required to comply with section 1916(b) (42 U.S.C. 300x–5(b) or to provide the certifications required by section 1916(c)(2) through (8) and (13) through (15) of the Public Health Service Act (42 U.S.C. 300x–4(c)(2) through (c)(8) and (c)(13) through (c)(15)). Also, the service identified in section 1915(a)(1) (42 U.S.C. 300x–3(a)(1) need not be provided by means of grants to community mental health centers.

13. By revising paragraph (b) of § 96.50 to read:

§ 96.50 Complaints.

(b) Complaints with respect to the health block grants shall be submitted in writing to either the Assistant Secretary for Health or: for the preventive health and health services block grant, the Director, Centers for Disease Control; for the alcohol and drug abuse and mental health services block grant, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration; for the primary care or maternal and child health services block grants, the Administrator, Health Resources and Services Administration. Complaints with respect to the social services block grant must be submitted in writing to the Assistant Secretary for Human Development Services. Complaints with respect to the low-income home energy assistance program must be submitted in writing to the Associate Commissioner for Family Assistance. Complaints with respect to the community services block grant must be submitted in writing to the Director, Office of Community Services. (The address for the Director, Center for Disease Control is 1600 Clifton Road, NE.; Atlanta, Georgia 30333. For each of the other officials cited above the address is 200 Independence Ave. SW., Washington, DC 20201.) The complaint must identify the provision of the act, assurance, or certification that was allegedly violated; must specify the basis for the violations it charges; and must include all relevant information known to the person submitting it.

* * * * *

14. By revising paragraph (a) of § 96.51 to read as follows:

§ 96.51 Hearings.

(a) The Department will order a state to repay amounts found not to have been expended in accordance with law or the certifications provided by the state only after the Department has provided the state notice of the order and an opportunity for a hearing. Opportunity for a hearing will not be provided, however, when the state, in resolving audit findings or at another time, has agreed that the amounts were not expended in accordance with law or the certifications. The hearing will be governed by Subpart F of this part and will be held in the State if required by statute.

* * * * *

15. By revising § 96.81 to read:

§ 96.81 Reallotment report.

As a part of the reallotment procedure established by 42 U.S.C. 8626, beginning with funds to be held available for fiscal year 1986, each recipient of funds must submit a report to the Secretary by August 1 of each year containing the following information:

(a) The amount of funds that the state desires remain available for obligation in the succeeding fiscal year, not to exceed 15% of the funds payable to the state and not transferred pursuant to 42 U.S.C. 8623(f);

(b) A statement of the reasons that this amount to remain available will not be used in the fiscal year for which it was allotted;

(c) A description of the types of assistance to be provided with the amount held available; and

(d) The amount of funds, if any, to be subject to reallotment.

16. Section 96.82 is revised to read as follows:

§ 96.82 Required report.

In accordance with 42 U.S.C. 8629(a), each state receiving funds shall submit to the Department by October 31 of each year a report of:

(a) The number and income levels of the households assisted by LIHEAP funds during the preceding fiscal year; and

(b) The number of households assisted by LIHEAP funds during the preceding fiscal year that contain one or more individuals who are 60 years or older and the number which contain one or more individuals who are handicapped.

§ 96.83 [Removed]

17. Section 96.83 is removed.

18. By adding a new § 96.86 to Subpart H to read as follows:

§ 96.86 State plans.

The assurances in section 2605(b) of Pub. L. 96–35, as amended, pertain to all forms of assistance provided by the state, except for the assurance in section 2605(b)(15), which pertains only to energy crisis intervention activities. The state plan submitted by the state in accordance with section 2605(c)(1) shall

provide a description of how the state will carry out each assurance with respect to each form of assistance to be provided under its program, expect for the assurance in section 2605(b)(15).

19. By adding a new § 96.87 to Subpart H to read as follows:

§ 96.87 Prevention of waste, fraud and abuse.

States and Indian tribes must establish appropriate systems and procedures to prevent, detect and correct waste, fraud and abuse in activities funded under the low-income home energy assistance program. The systems and procedures are to address possible waste, fraud and abuse by clients, vendors and administering agencies.

20. By adding a new § 96.88 to Subpart H to read as follows:

§ 96.88 Administrative costs.

(a) *Costs of planning and administration.* Any expenditure for governmental functions normally associated with administration of a public assistance program, such as taking applications, determining eligibility and benefits, and monitoring the assistance provided must be included in determining administrative costs subject to the statutory limitation on administrative costs, regardless of whether the expenditure is incurred by the state, a subrecipient, a grantee, or a contractor of the state.

(b) *Administrative costs for territories and Indian tribes.* For Indian tribes and tribal organizations and territories whose funds payable are less than or equal to $20,000, the limitation on the cost of planning and administering the low-income home energy assistance program shall be 20 percent.

21. By adding a new § 96.92 to Subpart I to read as follows:

§ 96.92 Termination of funding.

Where a state determines pursuant to section 675(c)(11) of the Community Services Block Grant Act that it will terminate present or future funding of any community action agency or migrant and seasonal farmworker organization which received funding in the previous fiscal year, the state must provide the organization with notice and an opportunity for hearing on the record prior to terminating funding. If a review by the Secretary of the state's final decision to terminate funding is requested pursuant to section 676A, the request must be made in writing, within 30 days of notification by the state of its final decision to terminate funding. The Department will confirm or reject the state's finding of cause within 90 days. If a request for a review has been made, the state may not discontinue present or future funding until the Department confirms the state's finding of cause. If no request for a review is made within the 30-day limit, the state's decision will be effective at the expiration of that time.

22. A new Subpart L is added to read as follows:

Subpart L—Alcohol and Drug Abuse and Mental Health Services Block Grant

§ 96.120 Scope.

This subpart applies to the alcohol and drug abuse and mental health services block grant.

§ 96.121 Earmarks.

For the purposes of determining whether a state has initiated a new or expanded service within the meaning of the earmarks set out in sections 1916(c)(14) and 1916(c)(15) of the Public Health Service Act, a service will be considered "new" or "expanded" to the extent that it exceeds funds expended by the state in fiscal year 1984.

Dated: June 26, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-14832 Filed 7-2-86; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 73

[MM Docket No. 86-264; FCC 86-297]

Broadcast Service; Review of Regulations for Modifications of Broadcast Transmitters

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proceeding is initiated to review the continued need for certain rules concerning user modifications of broadcast transmitters. It is intended to reduce the regulatory burden placed on broadcasters.

DATES: Comments may be filed on or before August 4, 1986, and reply comments on or before August 19, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael A. Lewis, Policy and Rules Division, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket 86-264 adopted June 19, 1986, and released June 26, 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.

Summary of Notice of Proposed Rule Making

On June 19, 1986, the Commission initiated, by Notice of Proposed Rule Making (Notice), a review of the rules pertaining to user modifications of broadcast transmitters. In adopting the Notice, the Commission noted that many modifications to broadcast transmitters require a licensee to file FCC Form 301 (Application For Construction Permit) and await a construction permit from the Commission before the modifications can be completed. Considering that licensees have the responsibility to ensure that transmission equipment is operating within authorized parameters regardless of whether or not modifications have been made, the Commission questioned the continued need for this lengthy procedure.

Therefore, the Notice proposes to replace the existing transmitter modification authorization procedure with one which would provide licensees the responsibility to ensure that the equipment is operating in accordance with the Rules. An application for Commission approval would not be required, but licensees would have to perform the necessary tests to show compliance with the appropriate Commission rules. The results of these tests must be retained at the transmitter site for as long as the modified equipment is in use. Thus, most modifications to broadcast transmitters would no longer require prior Commission review.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the proposal put forth in this proceeding will benefit licensees of all broadcast stations (over 10,000) by allowing them to modify their transmitters as they see fit, without the need for extensive and expensive filings. Public comment is requested on the Initial Regulatory Flexibility Analysis set out in full in the Commission's complete decision.

The Secretary shall cause a copy of the summarized Notice of Proposed Rule

Making, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

Comment and Ex Parte Sections

This is a nonrestricted notice and comment on rule making proceeding. See § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 4, 1986, and reply comments on or before August 19, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Paperwork Reduction Act Statement

The proposals contained in this document have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the information collection burden which the Commission imposes on the public. This proposed reduction in information collection burden is subject to approval by the Office of Management and Budget as prescribed by the Act.

List of Subjects

47 CFR Part 2

Reporting and recordkeeping requirements.

47 CFR Part 73

Radio broadcasting, Television broadcasting.

Amendatory Section

It is proposed to amend Title 47 CFR Parts 2 and 73 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citations for Parts 2 and 73 would continue to read as follows:

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

2. 47 CFR 2.977 would be amended by adding new paragraph (d) to read as follows:

§ 2.977 Changes in notified equipment.

* * * * *

(d) Notwithstanding the provisions of this section, broadcast licensees and permittees are permitted to modify notified equipment pursuant to § 73.1690 of the FCC's rules.

§ 2.1001 [Amended]

3. 47 CFR 2.1001 would be amended by adding new paragraph (l) to read as follows:

* * * * *

(l) Notwithstanding the provisions of this section, broadcast licensees and permittees are permitted to modify type accepted equipment pursuant to § 73.1690 of the FCC's rules.

PART 73—RADIO BROADCAST SERVICES

4. 47 CFR 73.1225 would be amended by redesignating paragraph (c)(2)(iv) as (c)(2)(iii) and revising it, and by revising paragraph (c)(3)(iii) to read as follows:

§ 73.1225 Station inspections by FCC.

* * * * *

(c)* * *

(2)* * *

(iii) Results of the tests required upon completion of transmitter modifications as required by § 73.1690(e).

(3)* * *

(iii) Results of the tests required upon completion of transmitter modifications as required by § 73.1690(e).

* * * * *

5. 47 CFR 73.1660 would be amended by revising paragraph (b) to read as follows:

§ 73.1660 Acceptability of broadcast transmitters.

* * * * *

(b) A permittee or licensee planning to install and use as a main transmitter one not included on the FCC's "Radio Equipment List" must obtain authority to use such a transmitter by filing for a construction permit on FCC Form 301 (FCC Form 340 for noncommercial educational stations). The application must include a complete description and circuit diagram of the transmitter, description of the carrier frequency determining circuits, complete operating parameters, and measurement data as would be required for a grant of type acceptance. A permittee or licensee planning to modify a transmitter which is included on the FCC's "Radio Equipment List" or for which an FCC Form 301 has been submitted and approved, must follow the requirement contained in § 73.1690.

* * * * *

6. 47 CFR 73.1690 would be amended by revising paragraph (e), by removing paragraphs (b)(1) and (b)(2) and by redesignating paragraphs (b)(3), (b)(4), and (b)(5) as (b)(1), (b)(2), and (b)(3) respectively to read as follows:

§ 73.1690 Modification of transmission systems.

* * * * *

(e) Electrical and mechanical modifications to be authorized transmitting equipment may be made without notification to or authorization from the FCC. Measurements must be made within ten days after completing the modifications of any parameter whose specified value could possibly have been altered by the modifications. (See §§ 2.985–2.999 for the appropriate tests). The results of these tests and a statement by the licensee certifying that the modified equipment complies with all the applicable Commission rules must be retained at the transmitter site for as long as the equipment is in use. (The rules concerning the interconnection of an AM transmitter with an AM stereophonic exciter which has not been designed to interface with the transmitter with which it is to be used are contained in the provisions of the type acceptance program.)

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–14947 Filed 7–2–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 64

[CC Docket No. 85–229, Phase II, FCC 86–253]

Common Carrier Service; Replacing Structural Separation With Nonstructural Safeguards for the Provision of Enhanced Services

AGENCY: Federal Communications Commission.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: The Commission requested comment on five areas deferred from the Computer III Report and Order: the regulatory treatment of protocol processing; certain nonstructural safeguards issues; the regulatory treatment of independent telephone companies; the regulatory treatment of network channel terminating equipment; and the international applicability of the basic/enhanced services definition. This action is taken so that the public can comment on new issues that arose in the course of the Computer III proceeding.

DATES: Comments due on August 8, 1986 and reply comments on September 8, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: William F. Maher, Policy and Program Planning Division, Common Carrier Bureau, (202) 632–0745.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Computer Inquiry Supplemental Notice of Proposed Rulemaking, CC Docket 85–229, adopted May 15, 1986, and released June 16, 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 also may be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Summary of Supplemental Notice of Proposed Rulemaking

On June 16, 1986 the Federal Communications Commission (the Commission or the FCC) released a Report and Order [1] in the Computer III Inquiry (Report and Order) (CC Docket 85–229) replacing structural separation with nonstructural safeguards for the provision of the enhanced services by AT&T and the BOCs. The Computer III Supplemental Notice of Proposed Rulemaking (Supplemental Notice) requested comment on five issues raised in the Report and Order.

First, the FCC presented three alternative regulatory treatments for protocol processing, which under the Computer II rules is included in the "enhanced service" catetgory. Under Alternative A, such functions would be treated as "adjunct" services, which could be offered as part of an underlying basic service or an enhanced service without changing the regulatory status of either. Under this approach, carriers would be permitted to offer protocol processing as a regulated service subject to Title II of the Communications Act.

Under Alternative B, while protocol processing functions in general would continue to be classified as enhanced, the FCC would have discretion to classify specific functions, such as asynchronous/X.25 and X.25/X.75 conversions, as adjunct services.

Under Alternative C, all protocol processing functions would remain classified as enhanced and their unseparated provision by the American Telephone and Telegraph Company (AT&T) and the Bell Operating Companies (BOCs) would be subject to the nonstructural safeguards, including Comparably Efficient Interconnection (CEI) and Open Network Architecture (ONA), adopted in the Report and Order.

The Commission asked for comments on the relative costs and benefits of these alternatives, as well as on the possible effects that such alternatives would have on the regulatory status of service providers whose offerings may currently be treated as enhanced solely because they incorporate protocol processing.

Second, while concluding in the Report and Order that nonstructural safeguards should be applied to the provision of enhanced services by the BOCs and AT&T, the Commission also decided to defer to the Supplemental Notice a final decision on certain of those safelguards. In this phase of the proceeding, it asked for comments on three types of proposed nonstructural safeguards: nondiscriminatory access to BOC network service, disclosure of network information by AT&T and the BOCs, and treatment of Customer Proprietary Interest (CPNI) possessed by AT&T and the BOCs. It also asked for comment on whether the existing capitalization plan requirements should be removed during the period that structural separation continue to apply to the enhanced service operations of AT&T and the BOCs.

Third, in order to gain a more focused record on whether to apply nonstructural safeguards to the provision of enhanced service by the independent local exchange carriers (the Independents), the Commission asked for comment on whether the differences between the *Computer II* structural separation requirement, which it declined to apply to the Independents, and the Report and Order's nonstructural safeguards, support application of the new rules to some or all those dominant carriers.

Fourth, the Commission asked for comment on two issues regarding network channel terminating equipment (NCTE): (a) whether the FCC should permit certain NCTE functions such as circuit termination, signal conditioning, and certain types of testing to be offered in the network, as well as in customer premises equipment (CPE); and (b) whether it should amend or clarify the carrier "multiplexer" exception to the *Computer II* CPE rules in light of certain development in the provision of digital services.

Fifth, the Commission requested comments on the application of the Report and Order to international communications, tentatively concluding that the Report and Order rules should apply to international communications. It proposed amending the rules accordingly.

The Commission certified that the Independents, AT&T and the BOCs are not small entities within the meaning of the Regulatory Flexibility Act but stated that the VANs may be subject to state regulation if Alternative A or B is adopted.

The Commission also advised the public that ex parte contacts are permitted from the time the Commission adopts the Supplemental Notice until a Public Notice is issued stating that a substantive disposition of the matter will be considered at a forthcoming meeting or until a final order disposing of the matter is adopted, whichever is earlier.

Ordering Clauses

Accordingly, it is ordered, that pursuant to the provisions of sections 1, 4(i), 4(j), 201–205, 218, 220, 303(g), 303(r), 403 and 404 of the Communications Act of 1934 as amended, 47 U.S.C. 151, 154(i)–(j), notice is given of proposed amendments to § 64.702 of the Commission's Rules and Regulations. We hereby give notice that in reaching our decisions herein we will not necessarily be limited to comments, reply comments and responses that may be filed, and that we may utilize other information, analyses and reports, provided that in each such case a copy of the material relied upon will be associated with the record of this proceeding.

It is further ordered, that comments, responses, and replies may be filed in accordance with §§ 1.48, 1.49 and 1.419 of the Commission's Rules and Regulations, 47 CFR 1.48, 1.49 and 1.419. Comments will be due on or before August 8, 1986 and replies will be due on or before September 8, 1986.

List of Subjects in 47 CFR Part 64

Communications common carriers Data processing service, Specialized service, Computer regulation, Tariff regulation.

William J. Tricarico,

Secretary.

[FR Doc. 86–14756 Filed 7–2–86; 8:45 am]

BILLING CODE 6712-01-M

[1] Published elsewhere in this issue.

47 CFR Part 73

[MM Docket No. 86-252, RM-5099]

Radio Broadcasting Services; Leroy, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by W. Russell Withers, Jr., licensee of Station WTWN-FM, Leroy, Illinois, which seeks to substitute Channel 281B1 for Channel 224A at Leroy, Illinois and to modify his license to specify the Class B channel. To provide for Channel 281B at Leroy, Channel 300A must be substituted for Channel 280A at Urbana, Illinois (Station WKIO-FM) for which an Order to Show Cause is issued. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

William P. Bernton, 1875 Eye Street, NW.—Suite 1050, Washington, DC 20006, (Counsel for petitioner);
WKIO, INC., 505 South Locust, Champaign, Illinois 61820.

DATES: Comments must be filed on or before August 18, 1986, and reply comments on or before September 2, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule making, MM Docket No. 86-252, adopted June 10, 1986, and released June 27, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Ralph A. Haller,

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

[FR Doc. 86-15020 Filed 7-2-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-261, RM-5277]

Radio Broadcasting Services; Manchester, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Barker Broadcasting Company proposing to allot FM Channel 289A to Manchester, Kentucky as that community's second FM channel.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mr. Kirk Tollett, First National Bank Building, Liberty Square, Sparta, Tennessee 38583 (Consultant to Petitioner).

DATES: Comments must be filed on or before August 18, 1986, and reply comments on or before September 2, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-261, adopted June 13, 1986, and released June 27, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceedings.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-15021 Filed 7-3-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-250, RM-5234]

Radio Broadcasting Services; Belle Chasse, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bridget Vinson proposing to allot FM Channel 275A to Belle Chasse, Louisiana as that community's first FM channel.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Richard J. Hayes, Jr., 1359 Black Meadow Road, Greenwood Plantation, Spottsylvania, VA, 22553 (Counsel to Petitioner).

DATES: Comments must be filed on or before August 18, 1986, and reply comments on or before September 2, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-250, adopted June 13, 1986, and released June 27, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time the Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. see 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-15017 Filed 7-2-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-262, RM-5344; RM-5295]

Radio Broadcasting Services; Cape Vincent, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on the allocation of Channels 234A and 274A to Cape Vincent, New York, as the community's first and second local services, at the request of Mars Hill Broadcasting Company, Inc. and Timothy J. Martz, respectively. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James R. Bayes, Esq., Jerry V. Haines, Esq., Wiley & Rein, 1776 K Street, NW., Washington, DC 20006 (Counsel to Martz); and David E. Hilliard, Esq. Wiley & Rein, 1776 K Street, NW., Washington, DC 20006 (Counsel to Mars Hill).

DATES: Comments must be filed on or before August 18, 1986, and reply comments on or before September 2, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-262, adopted June 13, 1986, and released June 27, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-15019 Filed 7-2-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-260, RM-5257]

Radio Broadcasting Services; Virginia, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Virginia Broadcasting Company, proposing the substitution of FM Channel 260C1 for 296A at Virginia, Minnesota, and modification of the license of Station WHLB to specify operation on Channel 260C1, as that community's first wide coverage area FM service.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Arthur Stambler, Andrew Ritholz, 1901 L Street, NW., Washington, DC 20036 (counsel for Virginia Broadcasting Company).

DATES: Comments must be filed on or before August 18, 1986, and replay comments on or before September 2, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-260, adopted June 13, 1986, and released June 27, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-15018 Filed 7-2-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[BMCS Docket No. MC-124; Notice No. 86-8]

Parts and Accessories Necessary for Safe Operation; Front Wheel Brakes

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is proposing to amend the Federal Motor Carrier Safety Regulations (FMCSR) by revising the brake rules which currently allows trucks and trucks tractors having three or more axles to be operated with no brakes on the front wheels. This action is needed to enhance the operational safety of commerical motor vehicles on the Nation's highways by establishing rules that are consistent with those of the National Highway Traffic Safety Administration (NHTSA) that govern the manufacture of new motor vehicles.

DATE: Comments must be received on or before August 4, 1986.

ADDRESS: All comments should refer to the direct number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 755–1011, or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426–0824, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Braking is an area where new technology (both theoretical and practical) has developed in recent years, with the potential for significant impact on the regulatory requirements of the FMCSR (49 CFR Part 393). The implementation of the National Highway Traffic Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standard (FMVSS) 121, Air Brake Systems, in the 1970's presented the automotive manufacturing industry and the users of commercial motor vehicles with new situations that questioned prior assumptions. The implementation of FMVSS 121 also precipitated a period of learning. The changes brought about by FMVSS 121 created new insights into the matching of brake systems on tractor/trailer combinations. Weight distribution, timing, and brake balance were examined in much greater detail then ever before. New features have been introduced into the marketplace. Some of the bold changes that were necessary to achieve the required new vehicle performances were later found to produce compromises in other operational areas. There is a great deal of new information now available to the industry.

The NHTSA's Heavy Duty Vehicle Brake Research Program has sought solutions to this complex and difficult problem of improving braking capability. Causing further complications are improvements in the efficiency of trucks and truck tractors which have placed additional demands on brakes. These efficiencies are improved aerodynamics to reduce drag coefficient, improved tire design to lessen rolling resistance, and more fuel-efficient diesel engines which have decreased engine-braking capability. The NHTSA's studies completed in 1985 have shown [1] that stopping distance can increase as a result of removing front brakes on three axle tractors and trucks. In these tests, removal of the front wheel brakes increased the straight line stopping distance of loaded single unit trucks and tractor-trailers traveling 20 miles per hour by as much as 34 percent; and of unloaded single unit trucks and single truck-tractors (bobtails) by as much as 92 percent. These increases occurred with full brake applications (no restrictions on wheel lockup). In 60 mile per hour tests where no more than one wheel per axle (or two wheels per tandem axle) was permitted to lock up at speeds above 20 miles per hour, these increases were as much as 24 percent and 29 percent respectively. The study cites the danger inherent in making 60 mile per hour stops with all wheels locked as a primary reason for the limited lockup criteria.

The NHTSA studies used vehicle stopping distance as the primary measurement in the controllability tests as well as in the straight line stopping tests. These studies indicate that if a vehicle has steering problems during braking, it will take longer to stop the vehicle since the driver will need to reduce braking effort in order to maintain steering control. Drivers provided by the American Trucking Associations, Inc., and the International Brotherhood of Teamsters evaluating several vehicles in a "brake-in-a-trun" maneuver on a wet surface. Drivers involved in these NHTSA studies generally agreed that some level of front braking was desirable. The front brake configuration on vehicles with the brake force distribution approaching the gross axle weight rating (GAWR) distribution seemed to provide the best vehicle braking performance on low coefficient of friction surfaces. With vehicles empty on any surface or with any loading on high coefficient of friction surfaces, a high percentage of braking on the front axle improved performance. At no time during the "curve" and "lane change" maneuvers did a configuration without front brakes appear to offer any advantage in controllability. In all cases, regardless of the surface involved, in-lane stopping distance was significantly greater without front brakes.

As front brake torque increases, steering wheel pull can increase if side-to-side imbalance is present. Brake imbalance is typically due to factors such as misadjustment or oil soaked brake linings. It would appear that a braking distribution based on GAWR distribution is a reasonable compromise at the present time. Such an even distribution would provide near optimum performance on low coefficient of friction surfaces with a fully loaded vehicle. Performance would be less than optimum at less than full load and/or on high coefficient of friction surfaces. Steering wheel pull due to imbalance at the front wheels should be within manufacturer's acceptable levels without power steering.

In the first half of 1979, the NHTSA discovered that several manufacturers were considering production of heavy duty vehicles without front axle brakes as a way to provide savings in cost and weight. The NHTSA then reexamined available data concerning the effect of such a removal and concluded that the removal of front axle brakes increases a vehicle's stopping distance. On October 18, 1979, the NHTSA published an NPRM (44 FR 60120) proposing the implementation of a requirement that heavy duty vehicles have brakes acting on all wheels. A final rule implementing such a requirement was published in the **Federal Register** on June 9, 1980 (45 FR 38380). 49 CFR 571.121. The effective date of the final rule was July 24, 1980.

The FHWA proposes to revise § 393.42 of the FMCSR by redesignating paragraphs (a) and (b) to (b)(2), (b)(3), and (b)(4), respectively. Editorial changes are proposed to these two paragraphs so that they can be more easily understood. Substantive changes to these two paragraphs are not being proposed. We also propose to delete paragraph (c) and to add new paragraphs (a) and (b)(1).

Section 393.42(c) of the FMCSR currently exempts vehicles having 3 or more axles from having brakes on steering axle wheels. In a new paragraph (a), we propose requiring that all commercial motor vehicles be equipped with brakes on all wheels. In a new paragraph (b)(1), we propose allowing motor vehicles with 3 or more

[1] National Highway Traffic Safety Administration Heavy Duty Vehicle Brake Research Program—Report #1—Stopping Capability of Air Braked Vehicles, Volume 1: Technical Report (DOT HS 806-740). Copies are available for review in the docket.

axles to be operated without brakes on the front wheels if the vehicles were manufactured before July 24, 1980. However, we also propose requiring motor carriers to retrofit motor vehicles with 3 or more axles that were manufactured between July 24, 1980, and the effective date of a final rule revising § 393.42 if the front brake components have been removed. Such vehicles would have to be retrofitted within one year from the effective date of a final rule. The proposal that brakes be required on all wheels is consistent with the NHTSA's requirements in FMVSS 121 (49 CFR 571.121, S5.1.8 and S5.2.2). The average life expectancy of a truck-tractor is 7 years. Since the NHTSA requirement became effective in 1980, normal attrition will remove the vast majority of the pre-1980 vehicles from service. The FHWA believes that the grandfathering of the vehicles will have little or no impact on safety of operations.

Heavy duty vehicle brake research ranks bobtail truck tractors as having the worst stopping capability, followed by empty trucks and tractor-trailer combinations. These groups were compared to buses (empty & loaded), loaded tractor-trailer combinations and loaded trucks. The stopping capability of loaded tractor-trailer combinations was not as effective as that of buses. This is due to the fact that the percentage of braking on their front (steering) axles was found to be inadequate. The stopping capability of loaded trucks also was not as effective as that of loaded tractor-trailer combinations. Trucks experienced more weight transfer onto their front axles than the loaded tractor-trailer combinations and the percentage of braking available at the front axle of the loaded truck was inadequate. The stopping capability of empty trucks, tractor-trailer combinations, and in particular, bobtail tractors was found to be relatively poor. This was due to the fact that their braking systems, which are designed for the fully-loaded condition and have fixed braking force distributions, product too much braking at the rear (or trailer) axles. When the load is removed, weight decreases by a much greater percentage on the rear axles than on the front axle. The NHTSA tests clearly established that rendering inactive or removing the front brakes decreases vehicle controllability during braking.

On January 1, 1982, section 26311 of the California Motor Vehicle Code made front wheel brakes mandatory on all vehicles operating in that State. Since that time, California officials advise, steering wheel pull has not been recognized as a problem. Comments are solicited on steering wheel pull and controllability problems that may be caused by mandatory front wheel brakes.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. It is anticipated that the economic impact of this rule to all individuals will be minimal. Accordingly, a draft regulatory evaluation has been prepared and is available for review in the public docket.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that, if promulgated, this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 393

Highways and roads, Highway safety, Motor carriers, Motor vehicle safety, Parts and accessories.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: June 30, 1986.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, by amending Part 393 as set forth below.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION [AMENDED]

1. The authority citation for Part 393 is revised to read as follows:

Authority: 49 U.S.C. App. 2509; 49 U.S.C. 3102; 49 CFR 1.48 and 301.60.

2. Section 393.42 is revised to read as follows:

§ 393.42 Brakes required on all wheels.

(a) Except as provided in paragraph (b), every commercial motor vehicle shall be equipped with brakes acting on all wheels.

(b) *Exception.* (1) Trucks or truck tractors having three or more axles—

(i) Need not have brakes on the front wheels if the vehicle was manufactured before July 24, 1980; or

(ii) Manufactured between July 24, 1980 and (*the effective date of the final rule*) must be retrofitted to meet the requirements of this section within one year from (*the effective date of the final rule*) if the brake components have been removed.

(2) Any motor vehicle being towed in a driveaway-towaway operation must have operative brakes as may be necessary to ensure compliance with the performance requirements of § 393.52. This paragraph is not applicable to any motor vehicle towed by means of a tow-bar when any other motor vehicle is full-mounted on such towed motor vehicle or any combination of motor vehicles utilizing three or more saddle-mounts.

(3) Any full trailer or pole trailer having a GVWR of 3,000 pounds or less need not have brakes acting on all wheels if no part of the load which rests on the towing vehicle exceeds 40 percent of the GVWR of the towing vehicle.

(4) Any semitrailer or pole trailer having a GVWR of 3,000 pounds or less need not have brakes acting on all wheels if no part of the load which rests on the towing vehicle does not exceed 40 percent of the GVWR of the towing vehicle.

[FR Doc. 86-15116 Filed 7-2-86; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Proposed Frameworks for Early Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: This document supplements proposed rules published on March 21, 1986 (51 FR 9854), June 6, 1986 (51 FR 20677), which notified the public that the U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish hunting regulations for certain migratory game birds during 1986–87, and provided information on certain proposed regulations.

This proposed rulemaking provides frameworks or outer limits for dates and times when shooting may begin and end, and the number of birds that may be taken and possessed in early seasons for migratory bird hunting. These are hunting seasons that open prior to October 1 and relate to mourning doves; white-winged and white-tipped doves; band-tailed pigeons; woodcock; common snipe; rails; common moorhens; purple gallinules; teal; sea ducks; experimental September duck seasons in Florida,

Iowa, Kentucky and Tennessee; a special sandhill crane-Canada goose season in southwestern Wyoming; sandhill cranes in the Central Flyway and Arizona; and extended falconry seasons. The framework for Alaska, Puerto Rico and the Virgin Islands will appear in a separate **Federal Register** document scheduled for publication on or about July 18.

The Service annually prescribes hunting regulations frameworks to the States for season selection purposes. The primary purpose of this proposed rule is to facilitate establishment of early-season migratory bird hunting regulations for 1986–87.

DATE: The comment period for the proposed early season frameworks will end on July 14, 1986, except that for Alaska, Hawaii, Puerto Rico and the Virgin Islands the comment period closed on June 19, 1986. The comment period for late-season proposals will close on August 25, 1986

A Public Hearing on Late-Season Regulations will be held August 1, 1986, starting at 9 a.m.

ADDRESSES: Send comments to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. The August 1 Public Hearing will be held in the Auditorium of the Department of the Interior Building on C Street, between 18th and 19th Streets, NW., Washington, DC. Notice of intention to participate in this hearing should be sent in writing to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Comments received on the supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240, (202) 254–3207.

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons, and regulations for Alaska, Hawaii, Puerto Rico and the Virgin Islands. Early seasons are those that open before October 1; late seasons open about October 1 or later. Regulations are developed independently for the early and late seasons, and Alaska and insular areas. The early-season regulations relate to mourning doves; white-winged and white-tipped doves; bandtailed pigeons; rails; common moorhens; purple gallinules; woodcock; common snipe; sea ducks in the Atlantic Flyway; teal in September in the Central and Mississippi Flyways; experimental duck seasons opening in September in Florida, Iowa, Kentucky and Tennessee; sandhill cranes in the Central Flyway and Arizona; a special sandhill crane-Canada goose season in southwestern Wyoming; and some extended falconry seasons. Late seasons include the general waterfowl seasons; special seasons for scaup and goldeneyes; extra scaup and teal in regular seasons; coots; and other extended falconry seasons. These regulations contain no information collections subject in Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Certain general procedures are followed in developing regulations for the early and late seasons. Initial regulatory proposals are announced in a **Federal Register** document published in March and opened to public comment. These proposals are supplemented as necessary, with additional **Federal Register** notices. Following termination of comment periods and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the **Federal Register.** Using these frameworks, State conservation agencies then select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the **Federal Register**, amending Subpart K of 50 CFR Part 20, to establish specific seasons, bag limits and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows. On March 21, 1986, the Service published for public comment in the **Federal Register** (51 FR 9854) a proposal to amend 50 CFR Part 20, with comment periods ending as noted earlier.

On June 6, 1986, the Service published for public comment a second document (51 FR 20677) which provided supplemental proposals for early- and late-season migratory bird hunting regulations framewords, with comment periods ending June 19, 1986, for Alaska, Hawaii, Puerto Rico and the Virgin Islands, July 14, 1986, for remaining early-season proposals, and August 25, 1986, for late-season proposals.

This document is the third in a series of proposed, supplemental and final rulemaking documents for migratory bird hunting regulations and deals specifically with supplemental proposed frameworks for early-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours and daily bag and possession limits for the 1986–87 season. All pertinent comments on the March 21 proposals received through June 19, 1986, have been considered in developing this document. In addition, new proposals for certain early-season regulations are provided for public comment. Comment periods on this third document are specified above under DATES. Final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands are scheduled for publication in the **Federal Register** on or about July 18, 1986, and for early seasons for other areas of the United States on or about August 4, 1986.

On June 19, 1986, a public hearing was held in Washington, DC, as announced in the **Federal Register** of March 21 (51 FR 9854) and June 6 (51 FR 20677), 1986, to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, common moorhens, purple gallinules, common snipe and sandhill cranes. Proposed hunting regulations were discussed for these species and for migratory game birds in Alaska, Puerto Rico and the Virgin Islands; September teal seasons in the Mississippi and Central Flyways; experimental duck season in September in Florida, Iowa, Kentucky and Tennessee; a special sandhill crane-Canada goose season in southwest Wyoming; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons.

This supplemental proposed rulemaking consolidates further changes in the original framework proposals published on March 21, 1986, in the **Federal Register** (51 FR 9854).

Presentations at Public Hearing

A number of reports were given on the status of various migratory bird species for which early hunting seasons are being proposed. These are briefly reviewed as a matter of public information, and to facilitate the Service's response to public comments at the Public Hearing on June 19 and in correspondence. Unless otherwise noted, persons making the presentations are Service Employees.

Mr. David Dolton, Mourning Dove Specialist, presented the status of the 1986 mourning dove population. The

report included information gathered over the last 21 years. Population indices for mourning doves heard in all three management units showed significant increases from 1985 to 1986 as follows: Eastern, 16.3 to 17.4; Central, 23.8 to 24.3; and Western, 10.6 to 11.9 average doves heard per route. Trends were calculated for the most recent 5-, 10-, and 15-year intervals and for the entire 21-year period. Estimates indicated significant downward trends in the Western Unit for all time periods. In the Eastern Unit, downward trends were found for the 5-, 10-, and 21-year periods; while in the Central Unit, downward trends were indicated for the 5-, and 10-year intervals. No significant trend was found for the other time periods. Trends for doves seen over the 21-year period generally agreed with trends for doves heard.

Mr. Ronnie R. George, Texas Parks and Wildlife Department, reported on the status of white-winged and white-tipped doves in Texas. The reduction in nesting habitat quality resulting from a severe freeze in December 1983 has largely been reversed and white-winged and white-tipped dove populations are now near normal. Texas, therefore, recommended that the traditional 4-day (2 weekends) Special White-winged Dove Season be reinstated for 1986. The season would include an aggregate daily bag limit of 10 doves, no more than 2 of which may be mourning doves and 2 of which may be white-tipped doves.

Mr. Roy Tomlinson, Southwest Dove Coordinator, conveyed information received from the Arizona Game and Fish Department about white-winged dove status in Arizona. Under restricted hunting regulations during the past 6 years, whitewing populations have stabilized at a low level. The annual harvest has varied between 135,000 and 194,000 whitewings during the past 5 years. No regulations changes are anticipated for the 1986 hunting season.

Mr. Sean Kelly, Woodcock Specialist, reported on the 1986 Status of American woodcock. The most significant findings were from the recently conducted singing-ground survey. This cooperative survey of woodcock breading populations in the United States and Canada indicated an increase of 2.7% among woodcock of the Eastern Region (Atlantic Flyway) since 1985; however, this population remains at a low level and has declined significantly over the long-term. In the Central Region (Mississippi Flyway and a portion of the Central Flyway), the survey indicated that woodcock increased 6.3% since 1985. The Central Region index shows a significant long-term increase of 1.1% per year, but, the current index remains near the long-term average.

Dr. James C. Bartonek, Pacific Flyway Representative, summarized harvests and status of the two populations of band-tailed pigeons. Harvests of the Four-Corners Population are comparatively small and constant. Harvests of the Pacific Population during 1985 were less than those of the two previous years. Indices from pigeons using mineral springs in Oregon and from call counts in Washington indicate that the population decreased in 1985 from that of 1984. The possibility that disease contributed to this short-term decline will be explored by the three coastal States and the Service.

Mr. Harvey W. Miller, Central Flyway Representative, reported on the status of sandhill cranes. The mid-continent population exceeds 500,000 birds, as measured by intensive surveys (including aerial photography of major springtime concentrations in Nebraska), and has been increasing. Approximately 5,900 hunters harvested 12,600 cranes in the Central Flyway during the 1985–86 hunting season. Harvests of mid-continent cranes in Alaska, Canada, and Mexico are expected to not exceed 9,000. The total of these sport harvests was within specified guidelines for the mid-continent population.

The Rocky Mountain Population of greater sandhill cranes was estimated at about 22,000 birds in March 1985 and has been increasing. Special limited hunting seasons during 1985 resulted in harvests of 92 cranes in southeastern Arizona and 138 cranes in southwestern Wyoming.

Comments Received at Public Hearing

Seven individuals presented statements at the public hearing on proposed early-season regulations. The comments are summarized below, and where appropriate, the Service has provided a response.

Mr. Donald S. Heintzelman, representing the Wildlife Information Center, Inc., and the Committee for Dove Protection of California and Pennsylvania, prefaced his comments on proposed 1986–87 migratory game bird hunting regulations with the contention that the sport hunting of wildlife is unacceptable to most Americans. Mr. Heintzelman recommended that no sport hunting of tundra swans be permitted in North America. He stated that Delaware's request for an experimental 10-day snow goose season in certain coastal marshes in October (see June 6, 1986, **Federal Register** 51 FR 20680) is unwarranted and should be rejected, and that the Service should be aware of the opportunity to establish nonkilling wildlife tourism alternatives in areas of snow goose concentrations. He also expressed concern regarding the status of the black duck and recommended that there be no sport hunting of the species. He commended the Service's proposal regarding clapper and king rails but strongly urged that the Service not permit the sport hunting of king rails in New Jersey because the species is a rare migrant and very restricted and local breeder there. In view of the status of woodcock in the Atlantic Flyway, he recommended no sport hunting of woodcock there. Concerning mourning doves, Mr. Heintzelman recommended that hunting regulations be more restrictive. He claimed surveys in California and Pennsylvania indicated the majority of people opposed dove hunting, contended that dove hunting is exploitive and inhumane and provides hunters the opportunity to indiscriminately slaughter all forms of wildlife and not retrieve the doves killed. Mr. Heintzelman also contended that doves do not conform to waterfowl flyways for management purposes. He expressed particular concern about hunting in September and recommended a public vote in each State to determine whether doves should be hunted, and gave additional requirements for management. Mr. Heintzelman urged the Service adopt a complete ban on the use of lead shot in all of North America. He expressed opposition to the continued extension of migratory game bird hunting seasons for falconers on the basis that falconry is unjustified in today's society, that raptors are under constant threat from a number of environmental factors, and that extended seasons encourage the further exploitation of birds of prey.

Response. The Service notes the position of the Wildlife Information Center, Inc. on sport hunting. The Migratory Bird Treaty Act of 1918 permits the sport hunting of migratory birds and vests authority to promulgate regulations in the Secretary of the Interior. While some citizens oppose sport hunting, others support it. Migratory birds are a renewable resource and sport hunting has been viewed as a proper use of that resource.

Mr. Heintzelman's recommendations regarding tundra swans, snow geese and black ducks will be considered by the Service during the process of establishing later-season regulations frameworks.

The Service finds no data that indicates king rail populations in New Jersey are depressed or that hunting is having a significant impact on the population status of the species.

The Service believes that habitat related factors have been the fundamental cause of the decline of the woodcock in the Atlantic Flyway. The Services notes, however, that the regulatory restrictions established in 1985 were an attempt to bring woodcock harvest opportunities to level commensurate with the current population status.

The appropriateness of the present mourning dove management units has been discussed previously in the **Federal Register** (see 45 FR 44541, 47 FR 30164 and 50 FR 27641 of July 1, 1980, July 12, 1982, and July 5, 1985, respectively). The three current management units reasonably delineate dove population segments that are largely independent of each other. These units provide an opportunity to deal with specific population issues.

The Service has responded previously in a number of **Federal Register** documents to concerns about September hunting of mourning doves (see 47 FR 30164–30165 of July 12, 1982, 48 FR 14712 and 48 FR 31269 of April 5 and July 7, 1983, respectively, 49 FR 28029 of July 9, 1984, and 50 FR 27641 of July 5, 1985). The results of an extensive study of mourning dove nesting indicated that September hunting does not have a demonstrable adverse effect on mourning dove populations. The Service knows of no quantitative evidence that dove hunting results in the indiscriminate slaugther of other wildlife.

The use of lead shot for hunting migratory birds in the United States is addressed by the Service in an upcoming final supplemental environmental imapct statement on that subject.

The Service has recognized falconry as a legitimate means of taking migartory game birds since 1964. Extended falconry hunting seasons have been offered to the States since 1977. In providing extended seasons, the Service based its position on data that show that less than 20 percent of the falconers participate in migratory game bird hunting. Those who participate take less than 6 migratory game birds per season. Considering that falconry is a difficult and inefficient method of taking migratory game birds, the Service is of the view that providing extended seasons neither encourages persons to enter the activity nor results in any significant take of raptors from the wild. While raptors are under a number of environmental threats, as is most wildlife, the Service has no evidence that falconry as now conducted under Sections 21.28 and 21.29 poses any risk to raptor populations. The status of most raptor populations in the United States is considered to be stable or increasing.

Mr. Frank Montalbano, III, representing the Florida Game and Fresh Water Fish Commission, provided comments in support of the request that the September duck season in Florida become operational. He indicated that information gathered during the 1981–83 evaluation period thoroughly addressed those issues identified in the Memorandum of Agreement between the State and the Service and demonstrated no adverse impacts on duck populations. He cited mean direct recovery rates generated from wood duck bandings in Florida as being lower than those reported in an earlier study which justified additional harvest of wood ducks in southern States. Further, he asked that the Service recognize the differences in harvest levels and estimated population sizes of wood ducks between Foorida and other States hosting September duck seasons. Mr. Montalbano maintained that results of the Florida evaluation differed substantially from the studies in Tennessee and Kentucky and called on the Service to make a separate determination in response to Florida's request for operational status.

Response. In the Memorandum of Agreement the Service specifically asked that the impacts of Florida's experimental September duck season on resident wood duck populations be assessed by banding. Results of the banding information provided in the final report were less than adequate to appraise impacts stemming from the increased harvest. The Service notes the difficulty in obtaining sufficient samples of banded wood ducks but cannot grant operational status in the absence of this information. The Service proposes to continue the September duck season in Florida as experimental during 1986–87 with the conditions that adequate pre-season bandings of wood ducks be obtained, and the overall approach to the experiment be modified as needed.

Mr. John M. Anderson, representing the National Audubon Society, noted that Service-proposed regulations for hunting mourning doves, woodcock, white-winged and white-tipped doves, and sandhill cranes appeared appropriate in view of the status information on these species presented at the hearing. He cautioned the Service to consider provisions to safeguard whooping cranes where necessary. Mr. Anderson endorsed continuation of the proposed restrictive woodcock hunting regulations frameworks established in 1985 but noted concern over the long-term downward trend in the eastern region population. He called on the Service to review efforts to expand and improve the data gathering program for woodcock. He also expressed concern over the decreasing trends in some populations of mourning doves, such as those of the Western Management Unit, and encouraged efforts to identify the reasons for those decreases. In regard to wood duck special seasons in Kentucky, Tennessee and Florida, Mr. Anderson noted it seemed advisable to redseign the studies and if necessary reduce harvest until survival rates stabilize at an acceptable level. He suggested a coordinated approach to management of wood ducks in the Mississippi and Atlantic Flyway seemed warranted. He closed by recommending the Service continue to provide opportunities for sport hunting to encourage hunters to continue to support habitat protection.

Response. The Service appreciates the general approval for its regulatory proposals. The Service will provide safeguards for whooping cranes where necessary. The Service shares Mr. Anderson's concern over the decreasing trends in eastern region woodcock and some doves. In regard to dove populations in the Western Management Unit, it is noted a subcommittee of the Western Migratory Upland Game Bird Committee will investigate the reasons for this decline. The Service supports this effort and awaits the findings of the subcommittee. However, this is an appropriate time to inform all interested parties that the Service will consider imposing regulations restrictions for mourning dove seasons in the Western Management Unit for 1987–88 if the population trend has not continued the short-term reversal evidenced in 1986. The Service is also examining ways to improve population and harvest survey information for woodcock. Further, the Service poposes to modify wood duck harvest regulations in Tennessee and Kentucky and to require additional data gathering efforts in these two States and Florida. The Service agrees a broader approach to management of eastern wood ducks is needed. These proposed regulations are designed to provide opportunities for sport hunting.

Ms. Jennifer Lewis, representing the Humane Society of the United States (HSUS) and the World Society for the Protection of Animals (WSPA) reiterated objections to the annual killing for sport of migratory birds. Specific assertions were: proposed September opening dates for mourning dove hunting seasons will jeopardize nesting adults and nestlings; a large and growing segment of the general public opposes sport hunting; more evaluations are needed on Puerto Rican waterfowl

and Columbid species, particularly studies on breeding chronology and productivity; concern that resident waterfowl and the Zenaida dove breed during the hunting season in Puerto Rico and that hunting interferes with normal breeding and rearing of young; hunting and habitat destruction may be the major cause for decline of resident waterfowl species in Puerto Rico and that split seasons should not be allowed.

Response. The Service's position concerning sport hunting in general, and September hunting of mourning doves are discussed above in the response to Mr. Heintzelman's comments. With respect to Ms. Lewis' comments regarding migratory birds in Puerto Rico, they will be addressed by the Service in the upcoming **Federal Register** document of final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico and the Virgin Islands.

Dr. Albert M. Manville, II, representing Defenders of Wildlife, discussed his organization's expectations from the evaluation of hunting and duck populations during the period of stabilized regulations and urged early release of findings. He expressed pleasure at the Service's efforts to address the problem of lead poisoning in waterfowl and bald eagles, the moratorium on changes in zones for duck hunting, and continuation of restrictive seasons and limits on woodcock. Among the late-season regulations, he recommended that restrictions be placed on the special scaup season, extra scaup and extra teal options, experimental canvasback season in the Atlantic Flyway, and the tundra swan season in North Carolina. Regarding early-season frameworks, he suggested that the Service more closely review last year's population data before allowing frameworks for the September teal season and recommended against "predawn" [sic] shooting hours. He expressed concern about seasons on sandhill cranes and tundra swans in areas frequented by whooping cranes. He noted that the Alaska Game Board adopted regulations in January 1986 that reduced the statewide limits on pintails and said that the proposed frameworks for Alaska should reflect this change.

Response. The Service notes the support of Defenders of Wildlife for actions on lead poisoning, duck hunting zones, and woodcock hunting restrictions. Dr. Manville's statements regarding scaup, teal, canvasbacks and tundra swans will be considered by the Service subsequently during the process for establishing late-season regulations.

His concern about shooting hours during September seasons has been discussed in the Environmental Assessment *Proposed Shooting Hours Regulations* dated August 1, 1977.

Dr. Manville previously expressed his concerns over proposed hunting of sandhill cranes and tundra swans in areas frequented by the endangered whooping crane, and they have been addressed in the July 5, 1985, **Federal Register** (50 FR 27641).

In regard to Dr. Manville's call for a review of survey data, particularly that relating to September teal seasons, the Service notes it reviewed all waterfowl population data collected during 1985 during the process of preparing proposals for September teal seasons.

Dr. Manville's comments regarding Alaska will be addressed by the Service in the upcoming **Federal Register** document of final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico and the Virgin Islands.

Mr. Ronnie R. George, representing the Central Flyway Council and the Texas Parks and Wildlife Department, requested that the following regulations changes be made for the 1986–87 hunting season:

1. Reinstatement of the traditional 4-day Special White-winged Dove Season during early September in Texas. The seasons would include an aggregate daily bag of 10 doves, no more than 2 of which could be mourning doves and 2 of which could be white-tipped doves.

2. Initiation of an experimental sandhill crane hunting season in central New Mexico to reduce crop depredations. Season length would be 16 days between October 10 and November 5 and the daily bag would be 3 cranes.

3. Expand the greater sandhill crane season in southwest Wyoming to include the Eden-Farson Agricultural Project in Sweetwater and Sublette Counties. Season length would be 14 days between September 1 and September 22. Seventy-five permits would be issued and the seasonal bag limit would be 3 cranes per hunter.

Response. The Service proposes to allow the Special 4-day White-winged Dove Season in Texas because of substantially improved whitewing populations in 1986. The Service also proposes to permit the sandhill crane season expansion in Wyoming but has deferred action on the sandhill crane season in New Mexico pending consultation with the Pacific Flyway Council.

Mr. Charles Kelley, representing the Southeastern Association of Fish and Wildlife Agencies complimented the Service and Office of Migratory Bird Management's efforts as related to migratory birds and supported the proposals offered. In regard to September dove seasons, he referred to the cooperative study by many States and the Service that concluded September hunting of mourning doves had no demonstrable adverse impacts on dove populations. Mr. Kelley voiced his support of sport hunting and noted the benefits to the migratory bird resource that have accrued as a result of hunter interest and efforts.

Written Comments Received

The supplemental proposed rulemaking which appeared in the **Federal Register** dated June 6, 1986, (51 FR 20677), summarized 10 comments which had been received by May 1, 1986. Since then three additional comments on early season proposals have been received. They are summarized below and numbered in the order in the March 21, 1986, **Federal Register.**

8. Experimental September duck seasons.

(a) In the June 6, 1986, **Federal Register** (at 51 FR 20679), the Service noted it proposed to continue the September duck seasons in Kentucky, Tennessee and Florida (5-consecutive-days; 4 ducks daily, no more than 1 of which may be a species other than teal or wood duck) as experimental in 1986–87 unless final or progress reports provide evidence of a detrimental effect on any segment of the duck resource. In response to this, an individual associated with a waterfowl publications company in Tennessee expressed his feelings that early duck seasons place an unnecessary negative burden on the mallard and pintail and therefore should not allow the harvest of any species other than teal and wood duck; and in the case of the wood duck, the Service should be mindful of the additional hunting pressure that this species faces during the regular season in the absence of other species.

Response. The experimental September duck seasons in Kentucky, Tennessee and Florida were initiated to investigate the merits of a September duck hunting season that is focused primarily on the harvest of early migrant teal and southern wood duck populations. Evidence indicated these ducks had low harvest rates and appeared able to sustain additional harvest. Regarding the individual's concern about the impact of early duck seasons on species such as mallards and pintails, the Service notes that results from each State's study indicate that the

percent composition of the experimental season harvest consisting of species other than teal or wood duck was extremely small, and because of the timing of those seasons the ducks harvested were considered to be locally produced.

Regarding the impact of such seasons on the wood duck, the Service is concerned about the decrease in the survival rate of wood ducks measured by the studies in Tennessee and Kentucky. As a result, the Service is proposing to continue the experimental September duck seasons in Kentucky and Tennessee with the restriction that only 2 of the 4 ducks permitted in the daily bag may be wood ducks. The effect of this reduction in the wood duck bag limit will be evaluated.

(b) The Service notes that September duck hunting seasons have several purposes, but their primary justification relates to the fact that a local breeding or migrating duck population offers additional recreational opportunity, and September is the only time that these more-lightly-utilized populations can be isolated. Several such seasons have been offered over the years. The most notable is a season on teal that migrate in September. In more recent years, seasons designed to utilize wood duck populations that breed in southern States have been implemented on an experimental basis. Several problems have surfaced with regard to September duck seasons.

1. These seasons harvest populations for which we have limited information; therefore, the risk of overharvest without detection is present.

2. The hunting of ducks in September at all latitudes impacts local breeding stocks as well as migrants. It is generally accepted that local breeding stocks, not diluted by migrants, are more vulnerable to harvest and can be overharvested very easily.

3. Special studies must be designed for each September season to test the effects on local breeding stocks and migrants, because normal procedures for gathering harvest and population information may be inadequate for this purpose. Standard data-collection methods may have to be modified or new techniques developed to provide the type and amount of information, both before and during the study, for an evaluation. These special studies may be expensive, and the number that can be conducted is obviously limited.

4. Special studies may involve data-gathering activities in States not participating in these special seasons in order to place harvest and population data in a broader regional or flyway prespective.

5. If these seasons are accepted and become operational as a suitable harvest strategy, they still must be subsequently monitored annually to insure that the increased hunting opportunity does not become detrimental to local or migratory waterfowl.

In summary, while September duck seasons are in principle a feasible harvest management strategy, the current situation with regard to their evaluation and their suitability for widespread application is under review by the Service. The Service has previously communicated with the Flyway Councils regarding the need for review of special zones and seasons, and September duck seasons are a specific example. To effectively evaluate these seasons, flyway-wide aspects of the management of target species will be reviewed with the appropriate Council. In the intervening period, the Service proposes to continue the experimental seasons in Iowa, Kentucky, Tennessee and Florida under the same regulatory provisions as provided during the study periods with the exception that in Kentucky and Tennessee the daily bag limit is reduced from 4 ducks daily, no more than 1 of which may be a species other than teal or wood duck to 4 ducks daily, no more than 2 of which may be wood ducks, and no more than 1 of which may be a species other than teal or wood duck.

14. Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits. In the June 6, 1986, **Federal Register** (at 51 FR 20680) the Service gave notice of the Mississippi Flyway Council's Upper Region Regulation Committee's endorsement of Illinois' and Michigan's requests for a late September/early October Canada goose season and an early September Canada goose season, respectively. The Service noted its concern regarding the impact of either season on migrant Canada geese, and requested additional information and comments on both seasons. In addition, the Services stated that ". . . prior to approval of such a season, the requesting State must provide in its proposal acceptance evidence (survey data, neck collar observations, etc.) that the area to be hunted does not receive appreciable numbers of migrant geese; or if migrant geese use the area they would not be expected during the special season."

By letters dated June 3 and June 17, 1986, Michigan provided additional information in support of its request for an 8-day early September (8th–15th) Canada goose season limited to the Lower Peninsula (exclusive of major goose migration/concentration areas) and two small areas in the Upper Peninsula.

Response. The Service does not propose either season because it still feels acceptable evidence is lacking concerning the numbers and distribution of migrant geese in the designated hunt areas during the requested seasons. While special hunting seasons to control nuisance Canada geese are feasible, the Service believes the proposals/requests for same should be planned more comprehensively through the flyway councils. It is likely other States have a similar interest in early seasons for Canada geese. The Service believes therefore that criteria should be developed and evidence presented that such seasons do not impact management efforts for Canada geese in other States.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours and bag and possession limits for designated migratory game birds in the United States.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data in this year's status of some migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlier is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street NW., Washington, DC.

All relevant comments on these early-season proposals received no later than July 14, 1986, and on late-season proposals received by August 25, 1986, will be considered. The Service will attempt to acknowledge received comments, but substantive response to individual comments may not be provided.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of these environmental assessments are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act," and "by taking such action necessary to insure that any action authorized, funded, or carried . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical."

The Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 23, 1986, the Office of Endangered Species, gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. Examples of such consideration include areas in Alaska and the Pacific Flyway closed to Canada goose hunting for protection of the endangered Aleutian Canada goose, and closed areas in Puerto Rico for protection of the Plain pigeon and Puerto Rican parrot.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibiity Act and Executive Order 12291

In the **Federal Register** dated March 21, 1986 (51 FR 9860), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Matomic Building—Room 536, Department of the Interior, Washington, DC 20240. As noted in the early **Federal Register** publication, the Service plans to issue its Memorandum of Law for migratory bird hunting regulations at the same time the first of the annual hunting rules is completed.

Authorship

The primary author of this proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1986–87 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.) as amended.

Proposed Regulations Frameworks for 1986–87 Early Hunting Seasons on Certain Migratory Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks which prescribe season lengths, bag limits, shooting hours and outside dates within which States may select seasons for mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; woodcock; snipe; common moorhens and purple gallinules; teal in September; experimental September duck season in Iowa, Florida, Kentucky and Tennessee; sea ducks (scoters, eiders, and oldsquaw) in certain defined areas of the Atlantic Flyway; sandhill cranes; sandhill cranes-Canada geese in southwestern Wyoming; and extended falconry seasons. For the guidance of State conservation agencies, these frameworks are summarized below.

Notice

Any State desiring its hunting seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens and purple gallinules, sandhill cranes or extended falconry seasons to open in September must make its selection no later than July 31, 1986. States desiring these seasons to open after September 30 may make their selections at the time they select regular waterfowl seasons. The States' selections for experimental September duck seasons and Wyoming's special sandhill crane-Canada goose season must also be made by July 31, 1986.

Atlantic Flyway coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than July 31, 1986. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

Outside Dates: All dates noted are inclusive.

Shooting Hours: Between ½ hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1986, and January 15, 1987, except as

otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit

(All States east of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively,

or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Shooting Hours: Between ½ hour before sunrise and sunset daily.

Zoning: *Alabama, Georgia, Illinois, Louisiana* and *Mississippi*, may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama—South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: Remainder of the State.

Georgia—The Northern Zone shall be that portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line.

Illinois—U.S. Highway 36.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana and Mississippi may commence no earlier than September 20, 1986.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming)

Hunting Seasons and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively,

or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning: In addition to the basic framework and the alternative, Texas may select hunting seasons for each of 3 zones described below.

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east of U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones.

Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 4-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1986 and January 25, 1987; the South zone between September 20, 1986 and January 25, 1987.

C. Except during the special 4-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves, (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

D. Regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

(Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

Hunting Seasons, and Daily Bag and Possession Limits:

Not more than 70 days with bag and possession limits of 12 and 24, respectively,

or

In all states except Arizona, not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

White-Winged Doves

Outside Dates: *Arizona, California, Nevada, New Mexico,* and *Texas* (except as shown below) may select hunting seasons between September 1 and December 31, 1986. *Florida* may select hunting seasons between September 1, 1986 and January 15, 1987.

Arizona may select a hunting season of not more than 29 consecutive days running concurrently with the first period of the split mourning dove season. The daily bag limit may not exceed 12 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

In the *Nevada* counties of Clark and Nye, and in the *California* counties of Imperial, Riverside and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24, respectively, with a 70-day season, or 15 and 30 if the 60-day option for mourning doves is selected; however, in either season, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate including no more than two mourning doves and two white-tipped doves per day; and the possession limit may not exceed 20 white-winged, mourning and white-tipped doves in the aggregate including no more than four mourning doves and four white-tipped doves in possession.

and

In addition, *Texas* may also select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1986, and January 25, 1987, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged doves and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1986, and January 15, 1987, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected); however, for either option, the bag and possession limits of white-winged doves may not exceed 4 and 8, respectively.

Band-Tailed Pigeons

Pacific Coast States and Nevada: California, Oregon, Washington and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey.

Outside Dates: Between September 1, 1986, and January 15, 1987.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with a bag and possession limit of 5.

Zoning: California may select hunting seasons of 30 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. The remainder of the State.

Four-Corners States: Arizona, Colorado, New Mexico and Utah.

Outside Dates: Between September 1 and November 30, 1986.

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: New Mexico may be divided into North and South Zones along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and south along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1986, in the North Zone and October 1 and November 30, 1986, in the South Zone.

Rails

(Clapper, King, Sora and Virginia)

Outside Dates: States included herein may select seasons between September 1, 1986, and January 20, 1987, on clapper, king, sora and Virginia rails as follows:

Hunting Seasons: The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits: In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10 and 20 respectively, singly or in the aggregate of these two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits: In the Atlantic, Mississippi and Central [1] Flyways and portions of Colorado, Montana, New Mexcio and Wyoming in the Pacific Flyway [2], 25 daily and 25 in possession, singly or in the aggregate of the two species.

Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1986, and January 31, 1987. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1986, and February 28, 1987.

Hunting Seasons, and Daily Bag and Possession Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning: New Jersey may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

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[1] The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

[2] The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the Counties of Hill, Chouteau, Cascade, Meagher and Park, and all counties west thereof.

Common Snipe

Outside Dates: Between September 1, 1986, and February 28, 1987. In Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland and Virginia the season must end no later than January 31.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 107 days in the Atlantic, Mississippi and Central Flyways and 93 days in Pacific Flyway portions of Montana, Wyoming, Colorado and New Mexico. In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

Common Moorhens and Purple Gallinules

Outside Dates: September 1, 1986, through January 20, 1987, in the Atlantic and Mississippi Flyways and September 1, 1986, through January 18, 1987, in the Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons.

Hunting Seasons, and Daily Bag and Possession Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi and Central Flyways; in the Pacific Flyway seasons must be the same as the duck seasons. Seasons may be split. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively; except the daily bag and possession limits in the Pacific Flyway may not exceed 25 coots and common moorhens, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Seasons not to exceed 58 days between September 1, 1986, and February 28, 1987, may be selected in the following States: *Colorado* (the Central Flyway portion except the San Luis Valley); *Kansas; Montana* (the Central Flyway portion except that area south of I–90 and west of the Bighorn River); *North Dakota* (west of U.S. 281); *South Dakota;* and *Wyoming* (in the counties of Campbell, Converse, Crook, Goshen, Larami, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1986 and February 28, 1987 may be selected in the following States: *New Mexico* (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); *Oklahoma* (that portion west of I–35); and *Texas* (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary).

Bag and Possession Limits: 3 and 6, respectively.

Permits: Each person participating in the regular sandhill crane seasons must obtain and have in his possession while hunting, a valid Federal sandhill crane hunting permit.

Special Seasons in the Pacific Flyway: Arizona may select a sandhill crane season subject to the following conditions:

1. The season may not exceed 6 days in November 1986.
2. The hunting area is confined to Game Management Units 30A, 30B, 31, and 32.
3. Each hunter must obtain and have in possession while hunting a special permit issued by the State. No more than 200 permits may be issued. Each permittee may take 2 sandhill cranes per season.
4. Emergency closures for all crane hunting may be invoked as necessary.

Special Sandhill Crane-Canada Goose Season

Wyoming may select a season(s) on sandhill cranes and Canada geese subject to the following conditions:

1. Outside dates for the season(s) are September 1–22, 1986.
2. Hunting will be by State permit.
3. No more than 125 permits may be issued for the Bear River drainage and 125 permits issued for Star Valley, all in Lincoln County. Each permittee may take 2 sandhill cranes and 3 Canada geese per season.
4. No more than 75 permits may be issued in the Eden-Farson Agricultural Project in Sweetwater and Sublette Counties, each permittee may take no more than 3 cranes and 1 goose per season, and the season may not exceed 14 days.
5. Emergency closures for all crane hunting may be invoked as necessary.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15, 1986, and January 20, 1987.

Hunting Seasons, and Daily Bag and Possession Limits: Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in *Maine, New Hampshire, Massachusetts, Rhode Island* and *Connecticut;* in those coastal waters of the State of *New York* lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the town of Riverhead to Red Cedar Point in the town of Southampton, including any ocean waters of *New York* lying south of Long Island; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island and emergent vegetation in *New Jersey, South Carolina,* and *Georgia;* and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegation in *Delaware, Maryland, North Carolina* and *Virginia;* and provided that any such areas have been described, delineated and designated as special sea duck hunting areas under the hunting regulation adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck season conventional or point-system daily bag and possession limits.

Deferred Selection: Any State desiring its sea duck season to open in September must make its selection no later than July 31, 1986. Any State desiring its sea duck season to open after September may make its selection at the time it selects its waterfowl season.

September Teal Season

Outside Dates: Between September 1 and September 30, 1986, an open season on all species of teal may be selected by *Alabama, Arkansas, Colorado* (Central Flyway portion only), *Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico,* (Central Flyway portion only), *Ohio, Oklahoma, Tennessee* and *Texas* in areas delineated by State regulations.

Hunting Seasons, and Bag and Possession Limits: Not to exceed 9 consecutive days, with bag and

possession limits of 4 and 8, respectively.

Shooting Hours: From sunrise to sunset daily.

Deadline. States must advise the Service of season dates and special provisions to protect non-target species by July 31, 1986.

Special September Duck Seasons

Iowa September Duck Season: Iowa may experimentally hold a portion of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. In 1986, the 5-day season segment may commence no earlier than September 20, with daily bag and possession limits being the same as those in effect during the 1986 regular duck season.

Florida September Duck Season: An experimental 5-consecutive-day duck season may be selected in September subject to the following conditions:

1. The season will be in lieu of the extra teal option.

2. The daily bag limit will be 4 ducks, no more than one of which may be a species other than teal or wood duck, and the possession limit will be double the daily bag limit.

Tennessee, and Kentucky September Duck Seasons: Experimental 5-consecutive-day duck seasons may be selected in September by *Tennessee* and *Kentucky* subject to the following conditions:

1. The season will be in lieu of September teal seasons.

2. The daily bag limit will be 4 ducks, no more than 2 of which may be wood ducks, and no more than 1 of which may be a species other than teal or wood duck. The possession limit will be double the daily bag limit.

Special Falconry Regulations

Extended Seasons. Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting seasons and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note: In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck seasons, September seasons, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Dated: June 30, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-15108 Filed 7-2-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 128
Thursday, July 3, 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

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.
Date: August 6–8, 1986.
Time: 8:00 a.m.–5:30 p.m., August 6–7, 1986. 8:00 a.m.–Noon, August 8, 1986.
Place: Red Lion Inn/Lloyd Center, 1000 N. E. Multnomah, Portland, Oregon 97232.
Type of meeting: Open to the public. Persons may participate in the meeting and site visits as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be meeting with the Joint Council on Food and Agricultural Science to review and respond to a USDA report on technology transfer; to assess how agricultural science and education can help enhance U.S. competitiveness in the world market; and to discuss rural development.

The Board will meet independently to assess food and agricultural research, and extension programs with primary emphasis on forest and watershed management, animal science, and peer review for the Cooperative State Research System.

Contact person for agenda and more information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 316–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250; telephone (202) 447–3684.

Done in Washington, DC, this 24th day of June 1986.

John Patrick Jordan,

Acting Administrator, Office of Grants and Program Systems.

[FR Doc. 86–15036 Filed 7–2–86; 8:45 am]

BILLING CODE 3410-MT-M

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments Maximum Reimbursement Rates

Correction

In FR Doc. 86–14698 beginning on page 23571 in the issue of Monday, June 30, 1986, make the following correction:

On page 23572, in the third column, in the first table, fourth column, the fourth entry should read ".2300".

BILLING CODE 1505-01-M

Packers and Stockyards Administration

Posted Stockyards; River Valley Livestock Market, Arkansas et al.

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below.

Facility No., name, and location of stockyard	Date of posting
AR-162 River Valley Livestock Market, Ola, Arkansas.	May 23, 1986.
IN-161 Bobby Lamb Feeder Pigs, Sedalia, Indiana.	Apr. 23, 1986.
OH-149 Hoppel Brothers Auction Pavilion, Inc., West Point, Ohio.	June 11, 1986.
PA-153 Green Acres Enterprise, Inc., d/b/a Green Acres Livestock Auction, Rossiter, Pennsylvania.	Mar. 29, 1986.
SC-139 Dudley Auction Pageland, South Carolina.	Mar. 1, 1986.
TN-183 Lawrence County Feeder Pig Sale, Inc., Ethridge, Tennessee.	June 6, 1986.
VT-111 Roberts Livestock & Auctioneering—Sales & Auction Barn, Newport, Vermont.	Mar. 20, 1986.
WA-129 Cattlemen's Livestock Exchange, Yelm, Washington.	May 28, 1986.

Done at Washington, DC, this 30th day of June 1986.

Harold W. Davis,

Livestock Marketing Division.

[FR Doc. 86–15106 Filed 7–2–86; 8:45 am]

BILLING CODE 3410-02-M

Proposed Posting of Stockyards; White Horse & Mule Co., Alabama et al.

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

AL–166 White Horse and Mule Company, Holly Pond, Alabama
AL–167 Kenneth Hinkle Feeder Pig Sale, Piedmont, Alabama
AZ–114 Pacific Livestock Auction, Chandler, Arizona
CO–153 Great Plains Livestock Commission, Inc., Lamar, Colorado
KY–172 Casey County Feeder Pig Market, Liberty, Kentucky
NM–120 Valley Livestock Auction, Inc., Milan, New Mexico
NY–165 Angelica Feeder Sales Cooperative, Inc., Angelica, New York
PA–152 Kish Valley Dairy Sales, Belleville, Pennsylvania
TX–330 Four County Auction Center, Inc., Industry, Texas
TX–331 Tri-County Livestock Market, Inc., New Summerfield, Texas
TX–332 Arrowhead Livestock Sales Co., Wichita Falls, Texas

Notice is hereby given that pursuant to authority under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed designation, may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, Unites States Department of Agriculture, Washington, DC 20250, by July 17, 1986.

All written submissions made pursuant to this notice shall be made available for public inspection in the office of the Director of the Livestock

Marketing Division during normal business hours.

Done at Washington, DC, this 30th day of June, 1986.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 86-15107 Filed 7-2-86; 8:45 am]

BILLING CODE 3410-02-M

Soil Conservation Service

Shavano Valley Watershed, Colorado; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture gives notice that an environmental impact statement is not being prepared for the Shavano Valley Watershed Plan, Montrose County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Boone, State Conservationist, Soil Conservation Service, 2490 W. 26th Avenue, Denver, Colorado 80211, telephone (303) 964-0295.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional or national impacts on the environment. As a result of these findings, Mr. Sheldon G. Boone, State Conservationist, has determined that the preparation and review of an environment impact statement are not needed for this project.

This flood control project concerns a plan to reduce flood and sediment damages within the watershed and downstream. The planned works of improvement include installing two floodwater retarding structures. The notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Mr. Sheldon G. Boone.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: June 24, 1986.

Sheldon G. Boone,

State Conservationist.

[FR Doc. 86-15011 Filed 7-2-86; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the location of the meeting scheduled for July 17 and 18, 1986, of the Alabama Advisory Committee to the Comission has been changed to the Sheraton Riverfront Hotel, 200 Coosa Street, Montgomery, Alabama, in the Steiner and Western Room respectively. (FR Doc 86-14508, Page 23452)

Dated on Washington, DC, June 30, 1986.

Yvonne Schumacher,

Program Specialist.

[FR Doc. 86-15043 Filed 7-2-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 8-85]

Proposed Foreign-Trade Zone; Salem, NJ; Amendment of Application

Notice is hereby given that the application submitted by the City of Salem Port Authority for a foreign-trade zone in Salem, New Jersey (50 FR 20816, May 20, 1985) has been amended to include an industrial park site of 144 acres at the Millville Municipal Airport, Millville, New Jersey, some 25 miles from Salem. The zone plan remains otherwise unchanged.

The period for comments is reopened until August 7, 1986.

The application and amendment material are available for public inspection at the following locations:

Port Director's Office, 1218F New Federal Bldg., 844 King Street, Wilmington, DE 19801.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania, NW., Washington, DC 20230.

Dated: June 30, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-15103 Filed 7-2-86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Cooperative Agreements; Minority Export Trading Company Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: Under Executive Order 11625, the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Export Trading Company Program (METCP) to operate three Minority Export Trading Companies (METC) for a period of 12 months each beginning on or about November 1, 1986. Each award will have noncompeting continuation funding options for two years, after the initial competitive year, based upon the availability of funds, satisfactory performance and at the Agency's discretion.

Federal funds are estimated at $300,000 for each METC with a 15% ($52,941) cost sharing requirement (which can be a combination of cash, in-kind and fees for service). Three separate awards will be made. The funding instrument for each award will be a cooperative agreement. Each award recipient will provide export development services to minority businesses and entrepreneurs in the designated geographic service area to assist them in entering into, or increasing their business efforts, in the international marketplace.

There are three designated geographical service areas. The *WESTERN AREA* includes the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Nevada, New Mexico, Montana, Oregon, Utah, Washington, and Wyoming. The *MID WESTERN AREA* includes the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Texas, and Wisconsin. The *EASTERN AREA* includes the States of Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Massachusetts, Maryland, New Jersey, New Hampshire, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode

Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia.

Applications will be judged on the experience and capability of the firm and its staff in providing export assistance (50 points); the resources that are available to the firm in providing assistance (10 points); the firm's proposed approach to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). It is advisable that applicants have an existing office in the continental U.S.

Applicants must be either established full service Export Trading Companies (ETC) or Export Management Companies (EMC) to be eligible for these awards. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes and educational institutions.

DATE: Closing date: The closing date for applications is August 1, 1986. Applications must be postmarked on or before August 1, 1986.

The anticipated processing time for these awards is 120 days. Unsuccessful applicants will be notified, in writing, within 30 days after the award decisions are made.

ADDRESS: Industry and Technology Division; Office of Enterprise Development; Minority Business Development Agency; U.S. Department of Commerce; Washington, DC 20230; (202 377-2881).

FOR FURTHER INFORMATION CONTACT: Luis Encinias, Acting Assistant Director, Office of Enterprise Development; Minority Business Development Agency; U.S. Department of Commerce; Washington, DC 20230 (202/377-3816).

SUPPLEMENTARY INFORMATION: This program is subject to Executive Order 12372, Intergovernmental Review of Federal Programs. Questions concerning the preceding information, copies of application kits, and applicable regulations can be obtained at the above address.

Applicants who have outstanding accounts receivable with the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

11,800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: June 26, 1986.

Luis Encinias,

Acting Assistant Director for Enterprise Development.

[FR Doc. 86-15006 Filed 7-2-86; 8:45 am]

BILLING CODE 3510-21-M

National Technical Information Service

Government-Owned Inventions; Availability of Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virgnia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-610,949 (4,581,845)
Suffocation-Type Insect Trap with Pitfall and Attractant

SN 6-825,109
Means and Method of Sampling Flow Related Variables from a Waterway in an Accurate Manner Using a Programmable Calculator

Department of Health and Human Services

SN 6-537,572 (4,582,802)
Stimulation of Enzymatic Ligation of DNA by High Concentrations of Nonspecific Polymers

SN 6-854,493
A Human Plasma Cell Line Having Rearranged *c-myc* Proto-Oncogene

SN 6-859,822
Silver Stain for Rapid, Quantitative Detection for Polypeptides and Nucleic Acids

SN 6-867,013
3-Deazaneplanocin A and Method of Preparation

Department of the Air Force

SN 6-324,349 (4,415,993)
Fast Access Non-Volatile Memory

SN 6-475,436 (4,583,001)
Scanning System for Mapping Gas Flow Uniformity in a Laser

SN 6-497,444 (4,583,096)
Fiber Optic Data Distribution for Phased Array Antenna

SN 6-501,944 (4,581,285)
High Thermal Capacitance Multilayer Thermal Insulation

SN 6-547,609 (4,584,579)
Medium PRF Pulse Doppler Radar Processor for Dense Target Environments

SN 6-825,113
Automatic Loading of Composite Tape Using Cassettes

SN 6-831,895
Electrically Controlled Integrated Optical Switch

SN 6-831,902
A Guided-Wave Optical Power Divider

SN 6-831,909
Glare Susceptibility Tester

SN 6-831,910
Optically Controlled Integrated Optical Switch

SN 6-833,640
Safe/Arm Explosive Transfer Mechanism

SN 6-838,971
Swept Acquisition for Pulsed Radio Frequency (RF) Phase Lock Loop

SN 6-840,619
Solid Fuel Burn Enhancer

SN 6-840,620
Two-Dimensional Phase Locked Semiconductor Laser Array

Department of the Army

SN 6-855,855
Electrolyte for Use in a High Energy Lithium Based Rechargeable Electrochemical Cell and Rechargeable Electrochemical Cell Including the Electrolyte

Department of Transportation

SN 6-185,466 (4,578,994)
Temperature Insensitive Pressure Jump Detector

[FR Doc. 86-15008 Filed 7-2-86; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Textile Consultations With the Government of Hong Kong To Review Trade in Category 349

June 27, 1986.

On May 30, 1986, the Government of

the United States requested consultations with the Government of Hong Kong with respect to cotton textile products in Category 349 (brassieres). This request was made on the basis of the agreement, effected by exchange of notes dated June 23, 1982, as amended, between the Governments of the United States and Hong Kong relating to trade in cotton, wool and man-made fiber textiles and textile products.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations between the two governments, the United States may request the Government of Hong Kong to limit exports in Category 349, produced or manufactured in Hong Kong and exported to the United States during 1986. The United States reserves the right to control imports at the established limit.

Anyone wishing to comment or provide data or information regarding the treatment of Category 349 uner the agreement with Hong Kong, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-15104 Filed 7-2-86; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1986; Addition and Deletions

SUMMARY: This section adds to and deletes from Procurement List 1986 commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 3, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 11 and May 9, 1986, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (51 FR 12538 and 51 FR 17225) of proposed additions to and deletions from Procurement List 1986, October 15, 1985 (50 FR 41809).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1986:

Cushion Seat, Vehicular
2540-01-074-6363

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Accordingly, the following commodities and services are hereby deleted from Procurement List 1986:

Commodities

Screwdriver, Cross Tip
5120-00-529-3101
5120-00-596-0866
Screwdriver, Flat Tip
5120-00-278-1269
5120-00-541-3004
5120-00-278-1268
5120-00-337-2465
5120-00-540-0563
5120-00-180-0708
5120-00-293-3309
Cashbox
7520-00-281-5931
Folder, Chapel Program
7690-00-NSH-0001
Illustrative Sheet
7690-00-NSH-0002
(Requirements for Wright-Patterson Air Force Base, Ohio only)

Services

Commissary Shelf Stocking, Naval Air Station, Moffett Field, California
Commissary Shelf Stocking, Naval Air Station, Point Mugu, California
Commissary Shelf Stocking and Custodial Service, Reese Air Force Base, Texas
Grounds Maintenance, Bergstrom Air Force Base, Texas
Janitorial/Custodial, McChord Air Force Base, Washington.

C.W. Fletcher,

Executive Director.

[FR Doc. 86-15068 Filed 7-2-86; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1986; Proposed Additions

SUMMARY: The Committee has received proposals to add to Procurement List 1986 commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before: August 6, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1986, October 15, 1985 (50 FR 41809):

Commodities

Coat, Women's Pajamas
6532-01-222-6565
6532-01-222-3116
Trousers, Women's Pajamas
6532-01-226-2961
6532-01-226-2962
Robe, Dressing, Women's
6532-01-215-7965
Trousers, Operating, Surgical
6532-00-299-9629
6532-00-299-9630
6532-00-299-9631
6532-00-299-9628

Services

Janitorial/Custodial, Marine Corps Air Station, Yuma, Arizona
Janitorial/Custodial, Cameron Station, Alexandria, Virginia.

C.W. Fletcher,

Executive Director.

[FR Doc. 86-15069 Filed 7-2-86; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Board Environment Panel; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Environment Panel will be held Monday, 21 July 1986 from 9:00 A.M. to 5:00 P.M. at the Pittsburgh Hilton, Gateway Center, Pittsburgh, PA.

FOR FURTHER INFORMATION CONTACT: Dr. Erhard Ploedereder, Tartan Laboratories, 477 Melwood Avenue, Pittsburgh, PA 15213, (412) 621-2210.

Patricia H. Means,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

June 30, 1986.

[FR Doc. 86-15099 Filed 7-2-86; 8:45 am]

BILLING CODE 3810-01-M

Ada Board Evaluation and Validation Panel; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Evaluation and Validation Panel will be held Monday, 21 July 1986 from 9:00 A.M. to 5:00 P.M. at the Pittsburgh Hilton, Gateway Center, Pittsburgh, PA.

FOR FURTHER INFORMATION CONTACT: Dr. Dudrey Smith, Lear Siegler Inc., Instrument Division, Grand Rapids, MI 49508 (616) 241-7665.

Patricia H. Means,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

June 30, 1986.

[FR Doc. 86-15098 Filed 7-2-86; 8:45 am]

BILLING CODE 3810-01-M

Ada Board; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board will be held Tuesday, 22 July 1986 from 9:00 A.M. to 5:00 P.M. at the Pittsburgh Hilton, Gateway Center, Pittsburgh, PA.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine McDonald, Institute for Defense Analyses, 1801 N. Beauregard Street, Alexandria, Virginia, 22311, (703) 824-5531.

Patricia H. Means,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

June 30, 1986.

[FR Doc. 86-15100 Filed 7-2-86; 8:45 am]

BILLING CODE 3810-01-M

Ada Board Technology and Standards Panel; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Technology and Standards Panel will be held Monday 21 July 1986 from 9:00 A.M. to 5:00 P.M. at the Pittsburgh Hilton, Gateway Center, Pittsburgh, PA.

FOR FURTHER INFORMATION CONTACT: Dr. Gerald Fisher, Room HO-C22, IBM Research, P.O. Box 218, Yorktown Heights, New York, 10598, (914) 789-7653.

Patricia H. Means,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

June 30, 1986.

[FR Doc. 86-15097 Filed 7-2-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Automated Submarine Detection will meet on July 23-24, 1986 at the Naval Ocean System Center, San Diego, California. The meeting will commence at 8:30 a.m. and terminate at 5:00 p.m. on July 23 and 24, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review the present undersea surveillance automated submarine detection and classification techniques and capabilities. The agenda will include technical briefings on the threat, maritime strategy, and industry overviews of past, present and future automated efforts. These briefings will contain information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this matter contact: Commander T.C. Fritz, U.S. Navy, Office of the Chief of Naval Research (Code OONR), 800 North Quincy Street, Arlington, VA 22217-5000. Telephone number (202) 696-4870.

Dated: June 30, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86-15067 Filed 7-2-86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP86-527-000 et al.]

Natural Gas Certificate Filings; Kentucky West Virginia Gas Co. et al.

June 27, 1986.

Take notice that the followings filings have been made with the Commission:

1. Kentucky West Virginia Gas Company

[Docket No. CP86-527-000]

Take notice that on May 30, 1986, Kentucky West Virginia Gas Company (Kentucky West), 340-17th Street, P.O. Box 1388, Ashland, Kentucky 41105, filed in Docket No. CP86-527-000 an

application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Kentucky West states that it would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations which paragraph refers to Subpart A of Part 284 of the Commission's Regulations. In compliance with § 284.7 of the Commission's Regulations, Kentucky West sets fort new transportation rates to be effective no later than July 1, 1986, it is explained.

Comment date: July 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP86-557-000]

Take notice that on June 18, 1986, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86-557-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing interruptible natural gas transportation services for CEPEX, Inc. (CEPEX), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authority pursuant to a May 14, 1986 transportation agreement to provide an interruptible transportation service for CEPEX of up to 40 billion Btu per day for an initial period of three years and month-to-month thereafter. CEPEX would use the natural gas to produce ammonia at its Gage County, Nebraska plant. Applicant states that the natural gas would be received for the account of CEPEX at three existing interconnections between Applicant and ONG Transmission Company (ONG) and four existing interconnections between Applicant and Delhi Gas Pipeline Corporation (Delhi) all located in Oklahoma. Applicant states that it would then deliver gas to CEPEX at an existing point of interconnection near Beatrice, Nebraska.

Applicant states that it would initially charge CEPEX a transportation rate of $0.35 per million Btu plus the currently effective GRI surcharge as set forth in Tariff Sheet No. 5A of Applicant's FERC Gas Tariff Volume No. 1. In addition, Applicant states that it would charge CEPEX or reduce the volumes it redelivers to CEPEX for fuel consumed, lost, and unaccounted for.

Applicant also requests authorization to add new receipt points or delete approved receipt points in the future.

Comment date: July 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company a Division of Tenneco Inc.

[Docket No. CP86-571-000]

Take Notice that on June 17, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant) P.O. Box 2511, Houston, Texas 77001, filed an application pursuant to section 7(c) of the Natural Gas Act for authority to render a transportation service for Texas Gas Exploration Corporation (Texas Gas Exploration), all as more fully set forth in this application which is on file with the Commission and open to public inspection.

Applicant proposes to render an interruptible natural gas transportation service for Texas Gas Exploration Corporation pursuant to the terms of a Gas Transportation Agreement dated May 20, 1986 (Agreement).

It is stated that Applicant would receive a quantity of gas on an interruptible basis as determined in Applicant's sole opinion not to exceed 30,000 Dekatherms per day, at a point of receipt located at the existing interconnection between the facilities of Applicant and Texas Gas Transmission Corporation (Texas Gas) in Vermilion Block 241, offshore Louisiana.

It is further stated that Applicant would transport and deliver, less quantities for its system fuel and uses, gas lost and unaccounted for and plant thermal reduction due to processing, if any, for the account of Texas Gas Exploration a thermally equivalent quantity of gas to: (1) A point located at the existing interconnection between the facilities of Applicant and Texas Gas near Egan in Acadia Parish, Louisiana and (2) the existing interconnection between the facilities of Applicant and Columbia Gulf Transmission Corporation (Columbia Gulf) near Egan in Acadia Parish, Louisiana.

Applicant would also transport the liquids and liquefiable hydrocarbons associated with the natural gas tendered for transportation hereunder.

Applicant proposes to charge Texas Gas Exploration for this transportation service a quantity charge equal to the product of 8.64¢ multiplied by the total quantity in dekatherms of gas delivered by Applicant for the account of Texas Gas Exploration during the month.

Texas Gas Exploration would provide the Applicant, at no cost, a daily quantity in dekatherms of gas for Applicant's system fuel and uses and gas lost and unaccounted for equal to ninety nine hundredths percent (.99%) of the quantities received from Texas Gas Exploration on any day, provided that Applicant may at its sole option elect to provide such gas to Texas Gas Exploration at Applicant's weighted average cost of gas.

Comment date: July 18, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15002 Filed 7-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-836-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; CRS Sirrine, Inc., et al.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

June 27, 1986.

Take notice that the following filings have been made with the Commission.

1. CRS Sirrine, Inc.

[Docket No. QF86-836-000]

On June 16, 1986, CRS Sirrine, Inc. (Applicant), of 1177 West Loop South, Houston, Texas 77027, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near Ernest, in Indiana County, Pennsylvania. The facility will consist of one or more fluidized bed boilers and a steam turbine generator. Applicant states that, the primary energy source for the facility will be coal refuse material, commonly known as preparation plant reject, silt, or bone coal. The net electric power production capacity of the facility will be 80 MW.

2. Cogeneration Michigan Associates Limited Partnership

[Docket No. QF86-807-000]

On June 10, 1986, Cogeneration Michigan Associates Limited Partnership (Applicant), of 1 Madison Avenue, Cadillac, Michigan 49601, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Vander Jagt Industrial Park, Cadillac, Michigan. The primary energy source will be biomass in the form of wood waste. The maximum electric power production capacity will be 38.6 megawatts. Natural gas will be used for auxiliary firing and as a back-up fuel to the boilers, but will not exceed 25 percent of the total annual energy input.

3. Cogentrix Virginia Leasing Corporation

[Docket No. QF86-835-000]

On June 16, 1986, Cogentrix Virginia Leasing Corporation (Applicant), of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the site of Virginia Chemicals at 801 Water Street, Portsmouth, Virginia. The facility will consist of six coal stoker-fired boilers and two extraction/condensing steam turbine generators. Steam extracted from the turbines will be utilized for process by the Allied Corporation chemical manufacturing plant. The net electric power production capacity of the facility will be 94,700 kW. Installation of the facility will begin approximately in December of 1987.

4. Coos Power Corporation

[Docket No. QF86-796-000]

On June 5, 1986, Coos Power Corporation (Applicant), of One Eagle Square P.O. Box 709, Concord, New Hampshire 03301, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at Emery Farm on North Road in Stark, Coos County, New Hampshire. The primary energy source will be biomass in the form of waste wood. The electric power production capacity will be 25 megawatts. Fuel oil or propane will be used for combustion chamber start-up (preheating) and occasional flame stabilization, and such uses will not exceed two percent of the total annual energy input to the facility.

5. CRS Sirrine, Inc.

[Docket No. QF86-780-000]

On June 4, 1986, CRS Sirrine, Inc. (Applicant), of 1177 West Loop South, Houston, Texas 77027, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near Osceola Mills, in Rush Township, Centre County, Pennsylvania. The facility will consist of one or more fluidized bed boilers and a steam turbine generator. Applicant states that, the primary energy source for the facility will be coal refuse material, commonly known as preparation plant reject, silt, or bone coal. The net electric power production capacity of the facility will be 80 MW.

6. CRS Sirrine, Inc.

[Docket No. QF86-782-000]

On June 4, 1986, CRS Sirrine, Inc. (Applicant), of 1177 West Loop South, Houston, Texas 77027, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near Berwind, in Adams Township, Cambria County, Pennsylvania. The facility will consist of one or more fluidized bed boilers and a steam turbine generator. Applicant states that, the primary energy source for the facility will be coal refuse materials, commonly known as preparation plant reject, silt, or bone coal. The net electric power production capacity of the facility will be 80 MW.

7. CRS Sirrine, Inc.

[Docket No. QF86-781-000]

On June 4, 1986, CRS Sirrine, Inc. (Applicant), of 1177 West Loop South, Houston, Texas 77027, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near Portage, in Summerhill Township, Cambria County, Pennsylvania. The facility will consist of one or more fluidized bed boilers and a steam turbine generator. Applicant states that, the primary energy source for the facility will be coal refuse material, commonly known as preparation plant reject, silt, or bone coal. The net electric power production capacity of the facility will be 80 MW.

8. Exeter Energy Limited Partnership

[Docket No. QF86-808-000]

On June 11, 1986, Exeter Energy Limited Partnership (Applicant), of c/o Oxford Energy, Inc., 150 East 52nd Street, New York, New York 10022, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Sterling, Windham

County, Connecticut. The primary energy source will be waste rubber tires. The electric power production capacity will be 25 megawatts. A small quantity of oil or gas will be used to preheat the furnaces.

9. Monroe County General Authority

[Docket No. QF86-802-000]

On June 6, 1986, Monroe County General Authority (Applicant), of 304 Washington Street, East Stroudsburg, Pennsylvania 18301, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Monroe County, Pennsylvania. The facility will generate electric power by burning biomass in the form of municipal solid waste. The maximum electric power production capacity of the facility will be 8 MW.

Standard Paragraphs

E. Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15001 Filed 7-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-552-000 et al.]

Electric Rate and Corporate Regulation Filings; Connecticut Light & Power Co. et al.

June 27, 1986.

Take notice that the following filings have been made with the Commission:

1. Connecticut Light and Power Company

[Docket No. ER86-552-000]

Take notice that on June 23, 1986, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Purchase Agreement with Respect to Various Gas Turbine Units between CL&P and Commonwealth Electric Company (Commonwealth) dated as of November 1, 1985.

CL&P states that the Purchase Agreement provides for a sale of Commonwealth of a specified percentage of capacity and energy from CL&P's South Meadow Units No. 11, 12, 13, and 14 (the Units) during the period November 1, 1985 until 30 days written notice by either party to the other party.

CL&P requests that the Commission permit the rate schedule filed to become effective on November 1, 1985. CL&P states the same as services to be provided under the Purchase Agreement are the same as services to be provided by CL&P pursuant to purchase agreements with Vermont Electric Generation and Transmission Cooperative, Inc. (FERC Rate Schedule Nos. CL&P 349), and with Newport Electric Cooperation (FERC Rate Schedule No. CL&P 350). CL&P states that a copy of the rate schedules have been mailed or delivered to Commonwealth, Wareham, MA.

Comment date: July 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Gulf States Utilities Company

[Docket No. ER86-558-000]

Take notice that on June 24, 1986, Gulf States Utilities Company (Gulf States or the Company) tendered for filing proposed changes in its electric resale rate schedules designated WST and WSD presently on file with the Commission.

The changes include increased rates for wholesale electric service. Under traditional ratemaking, Gulf States would have proposed an increase in revenues from services of $36.7 million or 58.7 percent based upon the twelve month period ending December 31, 1986. Instead, however, Gulf States is proposing a Rate Moderation Plan for the phase-in of its River Bend Unit 1 nuclear plant. The Rate Moderation Plan proposes an increase of $24.9 million of 40.0 percent in the first year of the Plan based upon the twelve month period ending December 31, 1986; an increase of $18.5 million or 21.2 percent in the second year of the Plan compared to the first year of commercial operation and an increase of $13.5 million or 12.8 percent in the third year of the Plan compared to the second year of commercial operation of River Bend.

The proposed rates are based upon a 12.41 percent overall rate of return, but the rates proposed under the Rate Moderation Plan will require lower revenues during the early years of the Plan.

Gulf States states that it is requesting this increase to reflect in rates the Company's investment in River Bend Unit No. 1. It expects the unit to be eligible for commercial operation during the month of June, 1986. The Company states that all of its 1985 income to common consisted of AFUDC accruals, principally on River Bend Unit No. 1 construction. Upon commercial operation of River Bend, FERC regulations require that AFUDC no longer be accrued. Thus, these non-cash earnings will then cease. If the reduction in earnings caused by the loss of AFUDC and the increase in expense for depreciation and O&M cost is not accompanied by offsetting revenues, the Company states that its financial integrity will be destroyed.

The Company states that the Rate Moderation Plan phases in the increase required for River Bend over eight years as a means of reducing the initial impact on customers' bills when River Bend commences commercial operation.

Gulf States is also seeking certain accounting authorizations through its Application. For the period between the date of commercial operation of River Bend and the date on which its proposed rates become effective subject to refund, Gulf States is requesting authority to accure a return on its River Bend investment and to defer certain River Bend related expenses. For the period during which the Rate Moderation Plan rates are in effect, both subject to refund and therafter, Gulf States is requesting authority to recognize the deferrals which are part of the Plan in its financial accounting.

Copies of the filing were served upon the public utility's jurisdictional customers, upon the Public Utility Commisison of Texas and upon the Louisiana Public Service Commission. The proposed effective date of the new rate schedules is August 24, 1986.

Comment date: July 9, 1986, in accordance with Standard Paragraph E at the end of this document.

3. Interstate Power Company

[Docket No. ER86-554-000]

Take notice that on June 23, 1986, Interstate Power Company (Company) tendered for filing new Electric Service Agreements between the Company and the communities of Adrian, Minnesota and Mountain Lake, Minnesota. The Rate Schedule number for Adrian is 103 and the number for Mountain Lake is 134. These agreements provide for lower transformer losses when low side

metering is involved, an increase in average power factor requirements and the implementation of a late payment penalty for Adrian, Minnesota.

Comment date: July 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Iowa Southern Utilities Company

[Docket No. ER86-509-000]

The notice that on June 23, 1986, Iowa Southern Utilities Company (Iowa Southern) tendered for filing an amendment to its earlier filing in this docket.

Iowa Southern states that the purpose of the amendment is to inlcude a Utilities Service Contract between Iowa Southern and the United States of America for the interruptible wholesale power under Rate 52 to the Iowa Army Ammunition Plant, which contract was inadvertently omitted from the original filing made with the Commission in this docket.

Iowa Southern requests that the Commission waive its customary notice period and that the contract become effective on July 1, 1986. Copies of the filing have been served upon all parties in interest.

Comment date: July 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Kansas Power and Light Company

[Docket No. ER86-553-000]

Take notice that on June 23, 1986, The Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract, dated May 27, 1986, with the City of Eudora, Kansas for wholesale service to that community. KPL states that this contract permits the City of Eudora to receive service under rate schedule WSM-12/83 designated Supplement No. 10 to R. S. FERC No. 178. The proposed effective date is May 27, 1986. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KPL states that copies of the contract have been mailed to the City of Eudora and the State Corporation Commission.

Comment date: July 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER86-551-000]

Take notice that on June 23, 1986, Portland General Electric Company (PGE) tendered for filing its revised Average System Cost (ASC) which reflects PGE's Power Cost Adjustment (PCA) rate change which become effective with meter readings on and after October 31, 1985. This filing includes a revised Schedule 4 to Appendix 1, Exhibit C of the Residential Purchase and Sale Agreement along with the authorization to implement this rate change from the Public Utility Commissioner of Oregon.

PGE states that the filing shows that the fourth quarter PCA adjustment to the current base ASC is 1.24 mills/kWh, which when added with the base ASC results in a net ASC rate effective for this period.

Comment date: July 9, 1986, in accordance with Standard Paragraph E at the end of this document.

7. San Diego Gas & Electric Company

[Docket No. ER-86-557-000]

Take notice that on June 23, 1986, San Diego Gas & Electric Company (SDG&E) tendered for filing the San Onofre Nuclear Generating Station Auxiliary Power Exchange Agreement between itself and Southern California Edison Company (Edison), executed June 13, 1986.

The Agreement provides for the terms and conditions of an energy exchange to provide electric service to existing and future auxiliary power loads at the San Onofre Nuclear Generating Station.

Copies of the filing were served upon the Public Utilities Commission of the State of California and Edison.

Comment date: July 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

8. Union Electric Company

[Docket No. ER86-556-000]

Take notice that on June 23, 1986, Union Electric Company (UE) tendered for filing an Interchange Agreement, dated May 19, 1986, between UE and the City of Sikeston, Missouri.

The Interchange Agreement, among other things, establishes the rights and obligations of the parties, the point of interconnection, the types of power and energy to be exchanged and the rates therefor.

UE requests waiver of the notice requirements and that the filing be permitted to become effective April 1, 1986.

Comment date: July 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power & Light Company

[Docket No. ER86-547-000]

Take notice that on June 23, 1986, Wisconsin Power & Light Companay (WPL) tendered for filing a new contract, dated January 1, 1983, that amends its Rate Schedule FERC No. 127, Contract for Electricity, effective January 1, 1981, between WPL and South Beloit Water, Gas and Electric Company (SBWG&E).

The Rate Schedule sets the contract energy, demand, and customer charges effective beginning January 1, 1983, for sale of electricity to SBWG&E, a wholly-owned subsidiary of WPL delivered from WPL's local electric distribution facilities in Wisconsin to the adjacent and interconnected distribution facilities of SBWG&E in Illinois.

SBWG&E states that it concurs in the filing of this Amendment, which amends its Rate Schedule FERC No. 3. No other party is affected by this schedule.

Comment date: July 10, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file with the Commission and are available for public inspection.

Kennety F. Plumb,

Secretary.

[FR Doc. 86-15083 Filed 7-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-548-000 et al.]

Electric Rate and Corporate Regulation Filings; Duke Power Co. et al.

June 26, 1986.

Take notice that the following filings have been made with the Commission:

1. Duke Power Company

[Docket No. ER86-548-000]

Take notice that on June 20, 1986, Duke Power Company ("Duke") tendered for filing a revision to its Contract with the United States of America, Department of Energy, acting by and through the Southeastern Power Administration ("SEPA"). The revision is in the form of a Letter Agreement dated May 23, 1986 and designated as "Supplemental Agreement No. 1 to

Contract 89-00-1501-770." It provides for Duke to sell replacement energy, if available, to meet minimum declarations unable to be supplied by SEPA Projects as a result of drought conditions. The term of the Agreement is to extend from June 1, 1986 until such time as drought conditions abate, but no later than May 31, 1987.

Because of the emergency nature of this service, Duke requests an effective date of June 1, 1986.

Copies of this filing were served on SEPA, the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 9, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER86-550-000]

Take notice that on June 20, 1986, Florida Power & Light Company (FPL) tendered for filing a document entitled Amendment Number Sixteen to Revised Agreement to Provide Specified Transmission Service Between Florida Power & Light Company and City of Homestead, Florida (Homestead) (Rate Schedule FERC No. 55).

FPL states that under Amendment Number Sixteen, FPL will transmit power and energy for Homestead as is required in the implementation of its interchange agreements with Florida Power Corporation, Jacksonville Electric Authority and The Florida Municipal Power Agency.

FPL requests that waiver of § 35.3 of the Commission's Regulations be granted and that the proposed Amendment be made effective immediately. FPL states that copies of the filing were served on Homestead.

Comment date: July 9, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Illinois Power Company

[Docket No. ER86-549-000]

Take notice that on June 20, 1986, Illinois Power Company ("the Company") tendered for filing an Agreement for Purchase of Power (Full Requirement Wholesale Electric Service for Resale) by Mt. Carmel Public Utility Co. from Illinois Power Company dated June 5, 1986 ("Agreement for Purchase of Power"). This represents a change in an existing rate schedule, Service Agreement under FERC Electric Tariff, Original Volume No. 1 applicable to Mt. Carmel Public Utility Co.

The proposed changes would initially increase revenue from jurisdictional sales and service by approximately $571,532 based on the twelve month period ending June 30, 1987. Thereafter, for a five year term, rates would be adjusted quarterly based on changes in an index of the rates of 24 electric utilities in Illinois and seven other midwestern states. However, the rates may not exceed seasonal limiters established in the Agreement for Purchase of Power.

The Company states that with the present rates it would earn an inadequate rate of return on electric sales to this customer during the twelve months ending June 30, 1987. The Company states that the electric rate changes made by this filing are necessary to more fully provide compensation for increases in costs. The Company proposes that the increased rates become effective on July 1, 1986 as agreed to by the Company and Mt. Carmel Public Utility Co. and requests that the Commission grant a waiver of its notice requirement pursuant to § 35.11 of the Commission's regulations. Copies of the filing were served upon Mt. Carmel Public Utility Company and the Illinois Commerce Commission.

Comment date: July 9, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Power and Light Company

[Docket No. ER86-546-000]

Take notice that on June 19, 1986, The Kansas Power and Light Company (KPL) tendered for filing proposed changes in its Federal Energy Regulatory Commission Electric Service Tariff No. 123. The proposed changes would increase revenues from jurisdictional sales and service by $366,396 based upon the 12 month period ending June 1987.

Service Schedule L, dated May 7, 1986, with Midwest Energy, Inc. (MWE) provides for the scheduling, controlling and coordinating of capacity resources by KPL for MWE. Copies of the filing have been mailed to Midwest Energy, Inc. and the State Corporation Commission of Kansas.

Comment date: July 9, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15084 Filed 7-2-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM 85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (PGC Pipeline Co.); Order Denying Clarification

Issued: July 1, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On May 7, 1986, PGC Pipeline Co. filed a request for clarification of Order No. 436-C, 51 F.R. 11566 (April 4, 1986). Briefly, PGC requests clarification that the Commission lacks jurisdiction under the Natural Gas Act over all transportation by an intrastate pipeline that is "incidental" to a direct sale of natural gas to an end-user.

In Order No. 436-C, the Commission declined to impose the open access condition on a pipeline that transports direct sale gas under its optional expedited procedure certificates. PGC interprets that order as a "disclaimer" of any "jurisdiction" over the transportation of natural gas in conjunction with a pipeline's direct sale to an end user. Specifically, it seeks clarification that this purported "disclaimer of jurisdiction" applies not only to "incidental" transportation of direct sale gas under the optional expedited certificate, but also to any transportation by an intrastate pipeline that is incidental to a direct sale.

We deny PGC's request for clarification. Order No. 436-C did not state that the Commission has no jurisdiction to impose conditions on the transportation of direct sale gas. It states that, primarily for policy reasons, we decline to impose the open access condition on pipelines transporting direct sale gas under an optional expedited certificate. While our order stated that we do not have rate jurisdiction over so called "merchant" pipelines which make direct sales—i.e., that we do not have jurisdiction over the sale *per se*—it did not disclaim our

certificate jurisdiction over the transportation of that gas.[1]

Accordingly, PGC's petition is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-15085 Filed 7-2-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of May 26 Through May 30, 1986

During the week of May 26 through May 30, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Chuck Hansen, 05/27/86, HFA-0274

Chuck Hansen filed an Appeal from a denial by the Dirctor of the DOE's Office of Classification of a Request for Information which Mr. Hansen had submitted under the Freedom of Information Act (FOIA). Portions of the document, entitled "History of Modification of USAF Aircraft for Atomic Weapon Delivery 1948-1954," were withheld by the Office of Classification under exemption 3 of the FOIA. In considering the Appeal, the DOE found that most of the withheld material still contained classified informaiton which was exempt from mandatory disclosure under the FOIA. However, the DOE found that some material could be released because of recent changes in classification policy. Furthermore, the DOE referred the document to the Department of Defense for its review because additional portions of the document appeared to have been deleted in accordance with Air Force classification guidelines.

Government Accountability Project, 05/27/86, KFA-0032

The Government Accountability Project filed an Appeal from a partial denial by the DOE's Oak Ridge Operations Office of a Request for Information which GAP had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the determination addressed only one of several categories of documents identified in the Request for Information and that, therefore, the determination was inadequate. Accordingly, the Request was remanded for further consideration.

Refund Applications

Aminoil U.S.A., Inc./Price Brothers Gas, Inc., et al., 05/27/86, RF139-65 et al.

The DOE issued a Decision and Order concerning sixteen Applications for Refund filed by purchasers of natural gas liquid products from Aminoil U.S.A., Inc. (Aminoil). After analyzing the evidence submitted, the DOE notified the claimants that they appeared to be spot purchasers, and advised them of the need to submit evidence which would establish that they had suffered injury due to Aminoil's pricing practices. None of the claimants responded and, consequently, the DOE found that the applicants had failed to rebut the presumption that spot purchasers were not injured. *See Aminoil U.S.A., Inc.*, 12 DOE ¶ 85,217 (1985). Accordingly, the sixteen Applications for Refund were denied.

Conlo Service, Inc./Jimmy's 05/30/86, RF236-1

The DOE issued a Decision and Order concerning an Application for Refund filed in the Conlo Service, Inc. special refund proceeding. The applicant, Jimmy's, was a reseller of motor gasoline whose volume of purchasers from Conlo Service during the consent order period entitled it to a refund below the $5,000 small claims threshold. In its Decision, the DOE granted the application under the standards specified in *Conlo Service, Inc.*, 13 DOE ¶ 85,321 (1985). The refund granted totals $5,161, representing $3,514 in principal and $1,647 in interest.

Kansas-Nebraska Natural Gas Company, Inc./Cal Gas Corporation, 05/29/86, RF113-1

The DOE issued a Decision and Order concerning an Application for Refund filed by Cal Gas Corporation, seeking a portion of funds remitted by Kansas-Nebraska Natural Gas Company, Inc. pursuant to a consent order that Kansas-Nebraska entered into with the DOE. Cal Gas purchased 50,661,339 gallons of natural gas liquid products from Kansas-Nebraska during the consent order period. The DOE found that for a major portion of the NGLPs that Cal Gas purchased, Cal Gas was charged prices below the average market price levels. As a result, Cal Gas obtained a substantial cost benefit. Considering the competitive advantage that Cal Gas enjoyed from its purchases from Kansas-Nebraska, the DOE limited the refund to Cal Gas to an amount equal to the gallons that the firm purchased at above market prices multiplied by the per gallon refund rate. The refund granted totals $451,952.00 representing $235,293.00 in principal and $216,659.00 in interest.

Kansas-Nebraska Natural Gas Company, Inc./Cities Service Oil & Gas Corporation, 05/28/86, RF113-4

The DOE issued a Decision and Order concerning an Application for Refund filed by Cities Service Oil and Gas Corporation seeking a portion of funds remitted by Kansas-Nebraska Natural Gas Company, Inc. pursuant to a consent order that Kansas-Nebraska entered into with the DOE. Cities purchased 484,464,809 gallons of natural gas liquid products from Kansas-Nebraska during the consent order period. The DOE found that for a portion of the NGLPs that Cities purchased, Cities was charged prices below the average market price levels. As a result, Cities obtained a substantial cost benefit. Considering the competitive advantage that Cities enjoyed from its purchases from Kansas-Nebraska, the DOE limited the refund to Cities to an amount equal to 50 percent of the gallons that Cities purchased at above market prices multiplied by the per gallon refund rate. The refund granted totals $1,849,559,00, representing $962,907.79 in principal and $886,651.21 in interest.

Leonard E. Belcher, Inc./Grimaldi, Inc. et al., 05/27/86, RF227-2 et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed on the basis of the procedures outlined in *Leonard E. Belcher, Inc.*, 13 DOE ¶ 85,348 (1986). All of the firms applied for refunds greater than $5,000, and were required to demonstrate that they had cost banks greater than the amount of the refund, and that they were injured as a result of the overcharges. After examining the evidence and supporting documentation, the DOE concluded that four of the firms had demonstated that they had cost banks, and had been injured in many of the months during the consent order period. Accordingly, these firms were granted refunds for the months when they were injured. The fifth firm could not demonstrate that it was injured by an amount greater than the small claims threshold amount, so its refund was limited to $5,000 plus interest. The refunds granted total $108,102, representing $87,700 in principal and $20,402 in interest.

National Helium Corp./District of Columbia, 05/28/86, RQ3-196

The DOE issued a Decision and Order concerning a proposed second-stage refund plan filed by the District of Columbia pursuant to a Decision and Order establishing procedures for the disbursement of funds obtained under a consent order with National Helium Corporation. The District proposed to use the refund to fund a used motor oil recycling project, to inform low income drivers of a new Environmental Protection Agency rule requiring a reduction in the lead content of motor gasoline and to compile a directory of the city's automotive service outlets. The DOE denied approval of the District's plan because it would not benefit consumers of motor gasoline who were injured by the alleged overcharges. The District was invited to submit a revised plan for the use of these monies at a later date.

Sid Richardson Carbon and Gasoline Company/Vanguard Petroleum Corporation, 05/28/86, FR 26-31

The DOE issued a Decision and Order concerning an Application for Refund from the Sid Richardson escrow account field by Vanguard Petroleum Corporation under the procedures outlined in *Office of Enforcement*, 10 DOE ¶85,056 (1983). Vanguard applied for a large refund, and was required to demonstrate that it had cost banks greater

[1] PGC's petition alludes to a hypothetical factual context in which an intrastate pipeline makes a direct sale of its system supply gas to an end user in another state and delivers that gas to an interstate pipeline. The interstate pipeline than transports gas under section 311(a) of the NGPA for ultiamte delivery to the end-user. PGC asks us to decline Natural Gas Act jurisdiction over the intrastate pipeline under those circumstances. We will not address those issues here. Such issues are more appropriately considered in the context of specific facts in a case ripe for decision. *See* United Gas Pipe Line Company, 19 FERC ¶ 61,190 (1982) (involving facts similar to those suggested by PGC).

than the amount of the refund, and that it was injured as a result of the overcharges. After examining the evidence and supporting documentation, the DOE concluded that Vanguard had demonstrated that it had cost banks, and had been injured in all of the months of the consent order period. Accordingly, Vanguard was granted a refund for the full volumetric amount. The refund totals $518,866 representing $272,033 in principal and $246,833 in interest.

Standard Oil Co. (Indiana)/ Pennsylvania, 05/27/86, RM21-24

The DOE issued a Decision and Order approving the Commonwealth of Pennsylvania's Motion to Modify its restitutionary plan for a portion of the Standard Oil Co. (Indiana) second-stage funds allotted to Pennsylvania. Pennsylvania was granted permission to: (1) change the location of a traffic signal project; (2) transfer $150,000 from its car-care clinics program to the regional energy management program; and (3) rechannel funding of its ridesharing program.

Dismissals

The following submissions were dismissed:

Name and Case No.

A.J. McNulty & Co., Inc.—RF225–1860
Abbco Inc.—RF225–1793
Anheuser-Busch, Inc.—RF225–959
Brevel Motors, Inc.—RF225–795
Chisholm Blvd & White Co.—RF225–890; RF225–891
City of Troy—RF225–983; RF225–984; RF225–985
Colonial Carbon Co.—RF225–866
Continental Can Co., Inc.—RF225–1849
Davis-Howland Oil Corp.—RF225–3114; RF225–3115
De Groh Bearing Co.—RF225–867
Delray Connecting Railroad Co.—RF225–824
Elco Gear Co.—RF225–1795
Fleming Companies, Inc.—RF225–998; RF225–999
Hall County Precinct I—RF225–1956; RF225–1957; RF225–1958
Hammonds Auto Supply—RF213–169
Harold Larkin—RF213–115
Leonard Company—RF213–55
Malt Products Corp.—RF225–796
Marley Cooling Tower Co.—RF225–801; RF225–802
Nassau Garage—RF213–70
Pass & Seymour—RF225–1021; RF225–1022; RF225–1023
Regener & Company—RF225–846
Richard and Trute Tool and Die Corp.—RF225–960
Smith Brothers Express—RF213–100
W.H. Stewart Company—RF225–794
W.R. Grace Company—RF225–813; RF225–814
Western Leather Products Corp.—RF225–820
Woods Hole, Martha's Vineyard and Nantucket Steamship Authority—RF225–974

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: June 27, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–15042 Filed 7–2–86; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–59222A; FRL–3043–3]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of three applications for testing marketing exemptions (TME's) under section 5(h)(1) of the Toxic Substances Control Act (TSCA), TME–86–43, TME–86–44 and TME–86–45. The test marketing conditions are described below:

EFFECTIVE DATE: June 20, 1986.

FOR FURTHER INFORMATION CONTACT: Vinay Kumar, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, RM. E–609B, 401 M Street SW., Washington, DC 20460, (202–475–8992).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–86–43, TME–86–44, and TME–86–45. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met.

The following additional restrictions apply to TME–86–43, TME–86–44, and TME–86–45. A bill of lading accompanying each shipment must state that the use of the substances are restricted to those approved in the TME's. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available to EPA for inspection or copying in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of the TME substances produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substances.

T–86–43

Date of Receipt: May 12, 1986.
Notice of Receipt: May 23, 1986, (51 FR 18961).
Applicant: Confidential.
Chemical: (G) Substituted dialklamino alkylazo carbonate.
Use: (G) Dyeing agent for use in liquid crystal displays.
Production Volume: 10 kg. (Import).
Number of Customers: 10–20.
Worker Exposure: 20–50 workers for 8 hours per day over 240 days.
Test Marketing Period: One year.
Commencing on: June 20, 1986.
Risk Assessment: EPA identified no significant health concerns. EPA did identify potential environmental concerns. However, significant releases of the test market substance are not expected. Therefore, the test market substance will not pose any unreasonable risk of injury to health or the environment.
Public Comments: None.

T–86–44

Date of Receipt: May 12, 1986.
Notice of Receipt: May 23, 1986 (51 FR 18961).
Applicant: Confidential.
Chemical: (G) Substituted alkylazo benzoate.
Use: (G) Dyeing agent for use in liquid crystal displays.
Production Volume: 10 kg. (Import).

Number of Customers: 10–20.
Worker Exposure: 20–50 workers for 8 hours per day over 240 days.
Test Marketing Period: One year.
Commencing on: June 20, 1986.

Risk Asssessment: EPA identified no significant health concerns. EPA did identify potential environmental concerns. However, significant releases of the test market substance are not expected. Therefore, the test market substance will not pose any unreasonable risk of injury to health or the environment.

Public Comments: None.

T–86–45

Date of Receipt: May 12, 1986.
Notice of Receipt: May 23, 1986 (FR 51 18961).
Applicant: Confidential.
Chemical: (G) Substituted alkyl phenyl alkyl tetrahydro alkylazo benzoate.
Use: (G) Dyeing agent for use in liquid crystal displays.
Production Volume: 10 kg. (Import).
Number of Customers: 10–20.
Worker Exposure: 20–50 workers for 8 hours per day over 240 days.
Test Marketing Period: One year.
Commencing on: June 20, 1986.

Risk Assessment: EPA identified no significant health concerns. EPA did identify potential environmental concerns. However, significant releases of the test market substance are not expected. Therefore, the test market substance will not pose any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 20, 1986.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 86–15062 Filed 7–2–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59222B; FRL–3042–8]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of two applications for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA), TME–86–46 and TME–86–47. The test marketing conditions are described below:

EFFECTIVE DATE: June 25, 1986.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, RM. E–611, 401 M Street, SW., Washington, DC 20460 (202–382–3391).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–86–46 and TME–86–47. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met.

The following additional restrictions apply to TME–86–46 and TME–86–47. A bill of lading accompanying each shipment must state that the use of the substances are restricted to those approved in the TMEs. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantities of the TME substances produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipments to the customers and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substances.

T–86–46

Date of Receipt: May 15, 1986.

Notice of Receipt: May 23, 1986 (51 FR 18961).

Applicant: Confidential.

Chemicals: (G) Substituted benzenesulfonamide.

Use: A component of a vehicle used in printing ink.

Production Volume: 1,360 kg.

Number of Customers: One.

Worker Exposure: A total of 3 workers for a total of 72 hours over 18 days.

Test Marketing period: Six months.

Commencing on: June 25, 1986.

Risk Assessment: Based on analogy to structurally related substances, the Agency identified teratogenic concerns. However, under the test marketing conditions, the estimated worker exposure to the test market substance will not be significant. Therefore, the test market substance will not present any unreasonable risk of injury to human health.

EPA has also identified potential environmental concerns. However, estimated releases of the test market substance will not be significant. Therefore, the test market substance will not present any unreasonable risk of injury to the environment.

Additional Restrictions: Workers are required to wear impervious gloves, chemical safety goggles, and category 23C high efficiency cartridge respirators during manufacturing and processing operations involving the substance. There must be a Material Safety Data Sheet (MSDS) for the substance which must state the requirements for workers to wear impervious gloves, chemical safety goggles, and category 23C high efficiency cartridge respirators.

The gloves must be determined by the applicant to be impervious to the TME substance under the conditions of exposure, including the duration of exposure. The applicant shall make this determination either by testing the gloves under the conditions of exposure, or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation of the gloves by the TME substance and associated chemical substances.

Public Comments: None.

T-86-47

Date of Receipt: May 15, 1986.
Notice of Receipt: May 23, 1986 (51 FR 18961).
Applicant: Confidential.
Chemical: (G) Substituted benzenesulfonyl chloride.
Use: (G) Site-limited intermediate.
Production Volume: 1,750 kg.
Worker Exposure: A total of 2 workers for a total of 24 hours over 4 days.
Test Marketing Period: 6 months.
Commencing on: June 25, 1986.
Risk Assessment: Based on analogy with structurally related substance, the Agency identified potential concerns for mutagenic and carcinogenic effects. However, under the test marketing conditions, the estimated worker exposure to the test market substance will not be significant. Therefore, the test market substance will not present any unreasonable risk of injury to human health.

EPA has also identified potential environmental concerns. However, estimated releases of the test market substance will not be significant. Therefore, the test market substance will not present any unreasonable risk of injury to the environment.

Additional Restrictions: Workers are required to wear impervious gloves, chemical safety goggles, and category 23C high efficiency cartridge respirators during manufacturing and processing operations involving the substance. There must be a Material Safety Data Sheet (MSDS) for the substance which must state the requirements for workers to wear impervious gloves, chemical safety goggles, and category 23C high efficiency cartridge respirators.

The gloves must be determined by the applicant to be impervious to the TME substance under the conditions of exposure, including the duration of exposure. The applicant shall make this determination either by testing the gloves under the conditions of exposure, or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation of the gloves by the TME substance and associated chemical substances.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 25, 1986.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 86-15063 Filed 7-2-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140077; FRL-3043-2]

Access To Confidential Business Information by Midwest Research Institute

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Midwest Research Institute (MRI) of Kansas City, Missouri for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT:

Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460. Toll-free: (800-424-9065).
In Washington, DC: (554-1404).
Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Inventory of Chemical Substances, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA.

Under contract no. 68-02-4252, MRI, 425 Volker Boulevard, Kansas City, MO will assist the Office of Toxic Substances' Exposure Evaluation Division in performing multimedia human monitoring of certain chemical substances to provide analysis for such chemicals as perchloroethylene, polychlorinated biphenyls, polychlorinated dibenzodioxins, dibenzofurans, and hexachlorobenzene. In addition to performing multimedia human monitoring, MRI will be required to provide environmental exposure study support to address such chemicals as asbestos, polychlorinated biphenyls and dioxins. This contract is a continuation of a previous contract (contract no. 68-02-3938) that was announced in the **Federal Register** of April 26, 1984 (49 FR 18036) and April 10, 1986 (51 FR 12392). Under the new contract MRI will also develop reports on information from monitoring activity and other exposure assessment programs which may include formal reports or manually prepared materials.

In accordance with 40 CFR 2.306(j), EPA has determined that MRI wil require access to CBI submitted to EPA under TSCA to successfully perform timely sampling and analysis of a wide variety of specific chemical compounds. For example, MRI personnel will be given access to environmental fate and human exposure data reported to the Agency under sections 4, 5, 6, and 8 of TSCA. MRI personnel will require access to comments submitted in response to rulemaking proposals under sections 4 and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide MRI access to these CBI materials at MRI's facilities on a need-to-know basis. All access to TSCA CBI under this contract will take place at either EPA Headquarters or MRI. Upon completing review of the CBI materials, MRI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1990.

MRI has been authorized for access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved MRI's security plan and has performed the required inspection of their facilities and has found them to be in compliance with the requirements of the manual. MRI personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: June 25, 1986.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 86-15061 Filed 7-2-86; 8:45 am]

BILLING CODE 6560-01-M

[AAA-FRL-3043-6]

EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA Master List of Debarred, Suspended, or Voluntarily Excluded Persons.

SUMMARY: 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreements) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

DATE: This short list is current as of June 23, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Staff, Grants Administration Division, at (202) 475–8025.

Dated: June 23, 1986.

Harvey G. Pippen, Jr.,

Director, Grants Administration Division (PM–216).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
A.C. Lawrence Leather Company, Inc. (Danvers, MA)	83-0007—00	D	Apr. 12, 1984	Apr. 11, 1987	§ 32.000(a) (c) (i).
A.F. Beil Electric Company, Inc. (Youngstown, OH)	85-0014—00	D	June 19, 1985	June 26, 1988	§ 32.000(a).
Altman, Larry L. (Charleston, SC)	85-0063—03	S	July 29, 1985		§ 32.000(b.
Atlas Prestressing Corp. (Panorama City, CA)	83-0050—00	D	Aug. 2, 1983	Aug. 1, 1986	§ 32.000(a).
Averill, Ernest Jr. (Fort Myers, FL)	83-0066—06	D	Dec. 2, 1983	Oct. 29, 1988	§ 32.000(b).
Barber, Lawrence (Hazelwood, NC)	83-0007—05	D	Apr. 12, 1984	Apr. 11, 1987	§ 32.000(a) (c) (i).
Barnum, James Charles (Utica, MI)	86-0010—01	D	Dec. 10, 1985	Dec. 9, 1988	§ 32.000(a).
Batzer Construction Co., Inc. (St. Cloud, MN)	85-0052—00	S	Mar. 7, 1986	Open	§ 32.000(b).
Batzer, Bruce (St Cloud, MN)	85-0052—01	S	Mar. 7, 1986	Open	§ 32.000(b).
Batzer, Robert (St. Cloud), MN)	85-0052—02	S	Mar. 7, 1986	Open	§ 32.000(b).
Beckham, Charles (Detroit, MI)	85-0030—02	S	Feb. 24, 1986	Open	§ 32.000(a) (b).
BECO, Inc. (High Point, NC)	85-0017—01	VE	Dec. 10, 1985	Dec. 9, 1988	§ 32.000(a) (3).
Bell, Bobby (Sulphur, LA)	85-0071—01	D	Mar. 6, 1986	Mar. 5, 1989	§ 32.000(a) (b).
Bell, Edwin (Sulphur, LA)	85-0071—02	D	Mar. 6, 1986	Mar. 5, 1989	§ 32.000(a) (b).
Blackwelder, Ray Martin (Concord, NC)	84-0011—01	D	June 27, 1985	June 26, 1988	§ 32.000(a).
Bowers, Darralyn (Detroit, MI)	844-0030—01	D	Feb. 24, 1986	May 11, 1989	§ 32.000(a)(b).
Boyette, Willie Eugene (Wilson, NC)	83-0044—01	D	Apr. 15, 1985	Apr. 14, 1987	§ 32.000(a).
Bridges, William D., Jr. (Wilmington, NC)	85-0069—01	D	Apr. 9, 1986	Apr, 8, 1989	§ 32.000(a).
Cannady, Nathaniel Ellis (Asheville, NC)	86-0047—01	S	Mar. 18, 1986	Open	§ 32.000(a)(i).
Carson, Charles (Grosse Point Woods, MI)	85-0066—00	D	Mar. 18, 1986	Apr. 1989	§ 32.000(b).
Carson, E. Eugene (Statesville, NC)	85-0004—01	D	Jan. 6, 1986	Jan. 5, 1989	§ 32.000(a).
Cooney Construction Co., Inc. (Waucon, IA)	86-0062—00	S	Mar. 18, 1986	Open	§ 32.000(b).
Croft, William A. (Madison, WI)	83-0047—00	D	Aug. 20, 1984	Aug. 19, 1987	§ 32.000(a).
Cryer, John P. (Baton Rouge, LA)	85-0062—03	S	July 29, 1985	Open	§ 32.000(b).
Cusenza, Sam (Ypsilanti, MI)	85-0024—02	D	Aug. 24, 1986	Apr. 2, 1989	§ 32.000(a) (b).
Cuti, Vincent J., Jr. (Huntington, NY)	83-0040—03	D	Apr. 30, 1085	Apr. 29, 1988	§ 32.000(a).
Dellinger, Theodore C. (Monroe, NC)	84-0012—01	VE	Mar. 12, 1985	Mar. 11, 1988	§ 32.000(a).
Dobson, Arthur A. (Lincoln, NE)	83-0030—01	D	Aug. 30, 1985	Apr. 18, 1987	§ 32.000(i).
Domanski, Gary Henry (Utica, MI)	86-0010—02	D	Dec. 10, 1985	Dec. 9, 1988	§ 32.000(a).
Drown, William Eugene (Marshall, MN)	85-0049—02	S	Jan. 17, 1986	Open	§ 32.000(b).
Dykes, Lamar D. (Nederland, TX)	85-0071—03	D	Mar. 6, 1986	Mar. 5, 1989	§ 32.000(a) (b).
Enmanco (Utica, MI)	86-0010-00	D	Dec. 10, 1985	Dec. 9, 1988	§ 32.200(a).
Environmental Management Corporation (Utica, MI)	86-0010-00	D	Dec. 10, 1985	Dec. 9, 1988	§ 32.200(a).
Fischback & Moore, Inc. (Dallas, TX)	84-0023-00	D	Jan. 15, 1986	Oct. 19, 1987	§ 32.200(a).
Floyd D. Stuckey & Associate (Winfield, KS)	84-0028-00	D	Aug. 26, 1985	Aug. 25, 1988	§ 32.200(a).
Foley, Bancroft T. (Washington, DC)	86-0004-03	D	Mar. 7, 1986	Mar. 6, 1989	§ 32.200(a).
Franklin Wiring Co. (Youngston, OH)	85-0044-00	D	Sept. 4, 1985	Sept 3, 1988	§ 32.200(a)(3).
FSA Engineering Consultants (Winfield, KS)	84-0028-00	D	Aug. 26, 1985	Aug. 25, 1988	§ 32.200(a).
Gabey, Martin (Northport, NY)	83-0040-02	D	Dec. 16, 1983	Dec. 15, 1986	§ 32.200(a).
G.E. Moore Company, Inc. (Greenwood, SC)	85-0031-00	D	Dec. 19, 1988	Dec. 18, 1988	§ 32.200(a)(3).
Geuther, Herbert G. (Philadelphia, PA)	86-0004-04	D	Mar. 7, 1986	Mar. 6, 1989	§ 32.200(a).
Goodspeed, Robert (North Hampton, NH)	83-0007-02	D	Apr. 12, 1984	Apr. 11, 1987	§ 32.200(c)(i).
Graves, George William (Wilmington, NC)	85-0069-02	D	Mar. 5, 1986	Mar. 4, 1989	§ 32.200(a).
Hansen, Leonard A. (St. Peter, MN)	85-0019-02	D	Sept. 26, 1985	Sept. 25, 1988	§ 32.200(a)(3).
Harry Johnson Plumbing Company, Inc. (Walla Walla, WA)	83-0060-00	D	July 22, 1983	July 21, 1986	§ 32.200(b) (c) (e) (i).
Hector Construction Co., Inc. (Calendonia, MN)	85-0056-00	S	Mar. 18, 1986	Open	§ 32.200(b).
Herring, Donald W. (Wilson, NC)	83-0044-01	D	Oct. 11, 1984	Oct. 10, 1987	§ 32.200(a).
Hi-Way Surfacing, Inc. (Marshall, MN)	85-0053-00	D	Dec. 17, 1985	Dec. 16, 1988	§ 32.200(a)(3).
Hodges Electric Company (Wilmington, NC)	85-0070-00	D	Apr. 4, 1986	Apr. 3, 1989	§ 32.200(a).
Howard P. Foley, Company (Washington, DC)	86-0004-00	D	Mar. 7, 1986	Mar. 6, 1989	§ 32.200(a).
Hugo Schulz, Inc. (Lakefield, MN)	85-0047-00	D	May 1, 1986	Apr. 30, 1989	§ 32.200(a).
Hunter, James C. (Gardena, CA)	83-0002-02	D	July 7, 1983	July 6, 1986	§ 32.200(a).
Insulation Speciality and Supply, Inc. (Cleveland, OH)	84-0025-00	D	Oct. 4, 1984	Oct. 3, 1987	§ 32.200(c)(i).
Jackson, Manly (San Jose, CA)	83-0048-02	D	June 27, 1983	June 26, 1986	§ 32.200(a).
Jerlow, John A. (Lakefield, MN)	85-0047-02	D	May 1, 1986	Apr. 30, 1989	§ 32.200(a).
Johnson, C. Theodore (Indianapolis, IN)	84-0023-04	D	Mar. 4, 1986	Mar. 3, 1989	§ 32.200(a)(f).
Johnson, Mark (Walla Walla, WA)	83-0060-01	D	July 22, 1983	July 21, 1986	§ 32.200(b)(c).
Johnson, Richard (Hinsdale, NH)	83-0007-03	D	Apr. 12, 1984	Apr. 11, 1987	§ 32.200(c)(i).
Jopel Contracting & Trucking Corporation (Bronx, NY)	85-0022-00	S	July 30, 1985	Open	§ 32.200(b).
Komatz Construction Co., Inc. (St. Peter, MN)	85-0019-00	D	Sept. 26, 1985	Sept. 25, 1988	§ 32.200(a)(3).
Komatz, Thomas P. (St. Peter, MN)	85-0019-01	D	Sept. 26, 1985	Sept. 25, 1988	§ 32.200(a)(3).
Krueger, Joseph (Cleveland, OH)	84-0025-01	D	Oct. 4, 1984	Oct. 3, 1987	§ 32.200(c)(i).
Kruse, Lloyd C. (Lakefield, MN)	85-0047-01	D	May 1, 1986	Apr. 30, 1989	§ 32.200(a).
L.A. Reynolds Company (Winston Salem, NC)	83-0036-00	D	July 1, 1983	June 30, 1986	§ 32.200(a).
Law, David P. (Greenwell Springs, LA)	85-0064-00	S	July 29, 1985	Open	§ 32.200(b).
Law, Theresa McBeth (Greenwell Springs, LA)	85-0064-01	S	July 29, 1985	Open	§ 32.300(b).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name and jurisdiction	File No	Status [1]	From	To	Grounds
Lee, Herbert P. III. (Sumter, SC)	84-0013-01	VE	Feb. 14, 1985	Dec. 31, 1987	§ 32.200(a).
Lench, Frank P. (Lafayette, CA)	86-0004-01	D	Mar. 07, 1986	Mar. 6, 1989	§ 32.200(a).
Long, Harold Delmar (Los Gatos, CA)	83-0050-01	D	July 7, 1983	July 6, 1986	§ 32.200(a).
Lundin Construction Co., Inc. (Mankato, MN)	85-0018-00	D	Jan. 22, 1986	Aug. 1986	§ 32.200(a).
Lundin, Richard C. (Mankato, MN)	85-0018-01	D	Jan. 22, 1986	Aug. 31, 1986	§ 32.200(a).
Marshall, Weymouth (Gloucester, MA)	83-0007-01	D	Apr. 12, 1984	Apr. 11, 1987	§ 32.200(c)(i).
Masselli, William P. (Bronx, NY)	85-0022-02	S	July 30, 1985	Open	§ 32.300(b).
M.B. Haynes Electric Corporation (Asheville NC)	86-0047-00	S	Mar. 18, 1986	Open	§ 32.200(a).
McDowell Contractors, Inc. (Nashville, TN)	84-0014-00	VE	Dec. 23, 1985	Dec. 22, 1988	§ 32.200(a).
McLaughlin & Schutz, Inc. (Marshall, MN)	85-0049-00	S	Mar. 7, 1986	Open	§ 32.200(a).
Modern Electric Co. (Statesville, NC)	85-0004-00	D	Jan. 6, 1986	Jan. 5, 1989	§ 32.200(a).
Moorehead, Dennis L. (Graniteville SC)	84-0006-01	D	Jan. 11, 1985	Jan. 10, 1988	§ 32.200(a).
Moorse, Lawrence (Marshall, MN)	85-0053-01	D	Dec. 17, 1985	Dec. 16, 1988	§ 32.200(a)(3).
Municipal & Industrial Pipe Services, Ltd. (Douglasville, GA)	82-0601	D	Oct. 7, 1982	Feb. 16, 1987	§ 32.200(b)(c) (e)(i).
	82-0408				
Murray Paving Company, Inc. (Whitesboro, NY)	84-0032-00	D	Aug. 19, 1985	Oct. 18, 1986	§ 32.200(a).
Murray, Harry (Whitesboro, NY)	84-0032-01	D	Aug. 19, 1985	Oct. 18, 1986	§ 32.200(a).
Newman, Fred M. (Vienna, VA)	83-0072-01	D	Sept. 30, 1983	Sept. 29, 1986	§ 32.200(i).
Newman, Richard Gordon (Pierre, SD)	83-0041-00	D	Nov. 29, 1983	Nov. 28, 1986	§ 32.200(a).
Newt Solomon, Inc. (Nashville, TN)	85-0058-00	D	Oct. 10, 1985	Oct. 9, 1988	§ 32.200(e)(i).
Nurre, Larry V. (Mankato, MN)	85-0018-02	VE	Jan. 22, 1986	Aug. 31, 1986	§ 32.200(a).
Odland, Kenneth Gabriel (Marshall, MN)	85-0049-01	S	Jan. 17, 1986	Open	§ 32.300(b).
Owens, Jerry B. (Southfield, MI)	85-0065-00	D	Feb. 24, 1986	Mar. 26, 1989	§ 32.200(b).
Peterson, Roger A. (Cloquet, MN)	85-0054-02	D	Feb. 25, 1986	Jan. 31, 1987	§ 32.200(a).
Pinney, J.A. Bruce (Bala Cynwyd, PA)	84-0023-06	D	Jan. 15, 1986	Mar. 3, 1989	§ 32-200(a)(f).
Post-Tensioning Service Corporation (Saratoga, CA)	83-0001-01	D	July 8, 1983	July 7, 1986	§ 32.200(a).
Regenscheid, Charles E. (St. Peter, MN)	85-0019-03	VE	Dec. 19, 1985	Dec. 18, 1987	§ 32.200(a)(3).
Reynolds, Jon R. (Winston Salem, NC)	83-0036-01	D	July 1, 1983	June 30, 1986	§ 32.200(a).
Rio Grande Construction Company (Bunkie, LA)	85-0063-00	S	July 29, 1985	Open	§ 32.200(b).
Rogers, Joseph J. (Pittsburgh, PA)	86-0004-02	D	Mar. 7,-1986	03-06-89	§ 32.200(a).
Rothrock Construction, Inc. (Murrells Inlet, NC)	83-0064-00	D	May 17, 1984	05-16-87	§ 32.200(a).
Rothrock, Steve D. (Murrells Inlet, NC)	83-0064-01	D	May 18, 1984	May 17, 1987	§ 32.200(a).
Sargent, Frederic B. (Pittsburgh, PA)	85-0020-01	VE	July 26, 1985	Feb. 12, 1987	§ 32.200(a)(3).
Saunders, George F. (High Point, NC)	85-0017-02	VE	Dec. 10, 1985	Dec. 9, 1988	§ 32.200(a)(3).
Sauseda, Roy (Bunkie, LA)	85-0063-02	S	July 29, 1985	Open	§ 32.300(b).
Schulze, Leland (Caledonia, MN)	85-0056-01	S	Mar. 18, 1986	Open	§ 32.300(b).
Shepherd, Frank A. (Clifton, TN)	85-0059-01	D	Mar. 26, 1986	Nov. 3, 1986	§ 32.200(e)(i).
Slattery, Edward J. (Youngstown, OH)	85-0015-01	D	Sept. 15, 1985	Mar. 14, 1987	§ 32.200(a)(3).
Smith, Paul F. (Lakefield, MN)	85-0047-03	D	May 1, 1986	Apr. 30, 1989	§ 32.200(a).
Solomon, Newt (Nashville, TN)	85-0058-01	D	Oct. 19, 1985	Oct. 6, 1988	§ 32.200(e)(i).
Stone, Francis (Swanzey, NH)	83-0007-04	D	Apr. 12, 1984	Apr. 11, 1987	§ 32.200(a)(c)(i).
Stuckey, Floyd D. (Winfield, KS)	84-0028-01	D	Aug. 26, 1985	Aug. 26, 1988	§ 32.200(a).
Tow Brothers Const., Company (Fairmont, MN)	85-0054-00	D	Jan. 22, 1986	Jan. 21, 1989	§ 32.200(a).
Tow, James (Fairmont, MN)	85-0054-01	D	Jan. 22, 1986	Jan. 21, 1989	§ 32.200(a).
Toy, Daniel Lee (Utica, MI)	86-0010-03	D	Dec. 10, 1985	Dec. 9, 1988	§ 32.200(a).
Tubre Enterprises (Bunkie, LA)	85-0062-01	S	July 29, 1985	Open	§ 32.300(b).
Tubre Enterprises, Inc. (Bunkie, LA)	85-0062-00	S	July 29, 1985	Open	§ 32.300(b).
Tubre, Charles (Baton Rouge, LA)	85-0062-02	S	July 29, 1985	Open	§ 32.300(b).
Tubre, Thomas (Bunkie, LA)	85-0063-01	S	July 29, 1985	Open	§ 32.300(b).
Tucker Brothers Contracting Co. (Pel City, AL)	83-0061-00	D	Nov. 26, 1984	Nov. 25, 1987	§ 32.200(a).
Tucker, Harold Ray (Pell City, AL)	83-0061-02	D	Nov. 26, 1984	Nov. 25, 1987	§ 32.200(a).
Tucker, Kenneth W. (Pell City, AL)	83-0061-01	D	Nov. 26, 1984	Nov. 25, 1987	§ 32.200(a).
Twedell, David Bruce (Gainesville, FL)	83-0020-01	D	Aug. 30, 1985	Aug. 29, 1987	§ 32.200(a).
Ulland Brothers, Inc., (Cloquet, MN)	85-0054-00	D	Feb. 25, 1986	Jan. 31, 1987	§ 32.200(a).
Ulland, Robert O. (Cloquet, MN)	85-0054-01	D	Feb. 25, 1986	Jan. 31, 1987	§ 32.200(a).
Universal Engineering & Supply, Inc. (Sulphur, LA)	85-0071-00	D	Mar. 6, 1986	Mar. 5, 1989	§ 32.200(a)(b).
Universal Engineering (Sulphur, LA)	85-0071-05	D	Mar. 6, 1986	Mar. 5, 1989	§ 32.200(a)(b).
Universal Wheels	85-0071-06	D	Mar. 6, 1986	Mar. 5, 1989	§ 32.200(a)(b).
Valenti, Joseph (Ypsilanti, MI)	85-0024-01	S	Feb. 24, 1986	Open	§ 32.200(a)(b).
Vanderhurst, William (Saratoga, CA)	83-0001-01	D	July 8, 1983	July 7, 1986	§ 32.200(a).
Vryenhoek, Ralph D. (Pittsburgh, PA)	85-0020-02	VE	July 25, 1985	Feb. 13, 1987	§ 32.200(a)(3).
W.V. Pangborne & Co., Inc. (Bala Cynwyd, PA)	84-0023-05	D	Jan. 15, 1986	Oct. 19, 1987	§ 32.200(a)(f).
Walstad, Merrill (Huntington Beach, CA)	83-0003-03	D	Jan. 27, 1983	June 6, 1986	§ 32.200(a).
Watson Electrical Construction Co. (Wilson, NC)	83-0044-00	D	Apr. 15, 1985	Apr. 14, 1987	§ 32.200(a).
Watson-Flagg Electric, Co., Inc. (Indianapolis, IN)	84-0023-03	D	Apr. 28, 1986	Oct. 19, 1987	§ 32.200(a).
Williams, G. Marvin (Asheville, NC)	86-0047-02	S	Mar. 18, 1986	Open	§ 32.200(i).
Wilson, John Bruff (Lebanon, TN)	84-0014-01	VE	Oct. 16, 1985	Oct. 15, 1986	§ 32.200(a).
Wirt, David (Douglasville, GA)	82-0601	D	Oct. 7, 1982	Feb. 16, 1987	§ 32.200(b)(c) (e)(i).
	82-0408				
Wirt, Gordon D. (Douglasville, GA)	82-0408	D	Dec. 7, 1982	Feb. 16, 1987	§ 32.200(c)(e).
Wirt, Judith C. (Douglasville, GA)	82-0408	D	Dec. 7, 1982	Feb. 2, 1987	§ 32.200(c)(e).
Wolverine Disposal, Inc. (Ypsilanti, MI)	85-0024-00	S	Feb. 24, 1986	Open	§ 32.200(a)(b).
Zeigler, Beaty Stevens	83-0045-01	VE	July 15, 1983	Aug. 31, 1986	§ 32.200(a).

[1] D = Debarred; S = Suspended; VE = Voluntarily Excluded.

[FR Doc. 86-5058 Filed 7-2-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3043-4]

Environmental Impact Statements; Notice of Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed June 23, 1986 Through June 27, 1986 Pursuant to 40 CFR 1506.9

EIS No. 860247, FSuppl, COE, MN, Twin Valley Lake Wild Rice River Flood Control Project, Fish and Wildlife Compensation Plan, Additional Information, Norman County, Due: August 1, 1986, Contact: Richard Makinen (202) 272-0121.

EIS No. 860248, Final, AFS, MT, Deerlodge National Forest, Noxious Weed and Poisonous Plants Control Program, Due: August 1, 1986, Contact: Dave Ruppert (406) 496-3368.

EIS No. 860249, Draft, FHW, MI, I-96 BL/Cedar Street Improvement, Cloverland Drive to Mt. Hope Road,

Reconstruction, Ingham County, Due: August 18, 1986, Contact: Thomas Fort (517) 377–1879.

EIS No. 860250, Draft, COE, WV, Kanawha River Navigation Study, Winfield Locks and Dam, Lock Replacement, Putnam County, Due: August 18, 1986, Contact: Ronald Meade (304) 529–5635.

EIS No. 860251, Draft, COE, NJ, Claremont Terminal Channel Navigation Improvements, Upper New York Bay, Hudson River County, Due: August 18, 1986, Contact: Len Houston (212) 264–4662.

EIS No. 860252, FSuppl, CDB, CA, Oakland Chinatown Redevelopment Project Construction, Additional Information, Grant, Alameda County, Due: August 1, 1986, Anu Raud (415) 273–3941.

EIS No. 860253, Final, SCS, TX, Choctaw Creek Watershed Protection, Flood Prevention and Recreation Plan, Grayson County, Due: August 1, 1986, Contact: Dale Fischgrade (817) 774–1216.

EIS No. 860254, Final, AFS, NV, CA, Toiyable National Forest, Land and Resource Management Plan, Due: August 1, 1986, Contact: Robert Nelson (702) 784–5331.

EIS No. 860255, Final, COE, MI, Keweenaw Waterway Navigation Channel, Polluted Dredged Material Confined Disposal Facility, Construction, Houghton County, Due: August 1, 1986, Contact: Judith Limburg (313) 226–6753.

EIS No. 860256, DSuppl, COE, MI, Upper Saginaw River, Dredged Material Disposal Facility, Revised Recommended Plan, Crow Island State Game Area, Saginaw and Bay Counties, Due: August 18, 1986, Contact: Florence Bissell (313) 226–3510.

Amended Notices

EIS No. 860245, Draft, AFS, CA, Los Padres National Forest, Land and Resource Management Plan, Due: September 30, 1986, Published FR 6–27–86—Review extended.

EIS No. 860235, Draft, COE, CA, Navy Geothermal Development Program, Power Plant Construction and Operation, Coso Known Geothermal Resource Area, Inyo County, Due: August 11, 1986, Published FR 6–20–86—Review period reestablished.

EIS No. 860236, Final, NOA, ME, MA, NH, CT, RI, REG, Northeast Multi-Species Fishery Management Plan, Adoption, Approval and Implementation, Due: July 16, 1986, Published FR 06–20–86—Review period reestablished/waived.

Dated: June 30, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86–15095 Filed 7–2–86; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3043-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 16, 1986 through June 20, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EIS's

ERP No. D–AFS–K01005–CA, Rating EC2, Lassen Nat'l Forest, Geothermal Exploration, Development and Production, Leasing, CA. **SUMMARY:** EPA expressed concerns that the draft EIS did not provide sufficient information on potential air quality and hazardous waste impacts and associated mitigation measures.

ERP No. DS–BLM–J61062–WY, Rating LO, Grass Creek and Cody Resource Areas, Wilderness Suitability, Owl Creek Wilderness Study Area, Designation, Wy. **SUMMARY:** EPA supports the proposed action of including the 710 acre Owl Creek Wilderness Study Area as an addition to the National Wilderness Preservation System.

ERP No. D–BLM–J70007–UT, Rating EC2, House Range Resource Area, Resource Mgmt. Plan, UT. **SUMMARY:** EPA is concerned that the preferred alternative, to continue grazing allotment levels at present demand and perform additional monitoring, is inadequate without corrective action to address existing impacts to riparian areas and sensitive species that have been identified. EPA recommends allotment adjustments and modification of management practices.

ERP No. D–COE–J01069–CO, Rating EO2, Parachute Creek Shale Oil Program, Phase II, Expansion, 404 Permit, Co. **SUMMARY:** EPA has no objections to the proposed action due to the potential to exceed the PSD particulate increments and the potential problems with the spent arsenic catalysts. To properly evaluate impacts, additional information is needed including further analysis of the advantages of selecting a head of drainage basin fill location for the retorted shale pile, a mass balance of the waste materials, and an update of the recent changes in EPA's regulatory programs regarding mine wastes.

ERP No. D–FHW–E40693–GA, Rating EC2, GA–316 Extension, GA–316 to GA–10/US 78, Improvements, 404 Permit, GA. **SUMMARY:** EPA's main concerns include the alternative anslysis and impacts on wetlands, noise levels, and air quality. EPA is, therefore, requesting additional discusion or evaluation of alternatives, avoidance or minimizing wetland intersection, a wetland mitigation plan for unavoidable impacts, use of an individual rather than regional 404 wetland permit, greater consideration of noise abatement and discussion of the hydrocarbon emissions of the proposed project involving a Hydrocarbon Pollutant Burden Analysis.

ERP No. D–MMS–A02218–00, Rating E01, 1987 Central and Western Gulf of Mexico OCS Oil and Gas Sales Nos. 110 and 112, Leasing, AL, MS, LA, and TX. **SUMMARY:** EPA expressed objections to the proposed leasing of remaining unleased areas in the absence of a commitment by Minerals Management Service (MMS) to adopt protective stipulations to protect topographic highs and live bottom areas. EPA expressed support for MMS efforts in conducting photo-chemical and cumulative air quality modeling studies.

ERP No. D–NPS–C61034–00, Rating EC2, Upper Delaware Scenic and Recreational River, River Mgmt. Plan, PA and NY. **SUMMARY:** EPA has concerns regarding implementation of the project as proposed and requests that the impacts associated with land acquisition, water quality, a hazardous waste landfill, and recreational uses be more fully discussed in the final EIS.

Final EIS's

ERP No. F–AFS–J82001–00, Custer Nat'l Forest, Noxious Weed Treatment Program, MT, ND, and SD. **SUMMARY:**

EPA is satisfied that the Forest Service has addressed primary environmental imapcts related to the draft EIS. The requirement of the State certification of applicators combined with the Forest's activity monitoring plan should provide a sound program for noxious weed control while ensuring maximum protection of the environment.

ERP No. F-FHW-E40657-FL, FL-44 Upgrading, CR-581 (Pleasant Grove Rd.) to FL-44/FL-45 (US 41) Inter-section, FL. **SUMMARY:** EPA's primary concern involves noise mitigation. Since no mitigation was proposed in the final EIS, EPA requests that additional consideration be provided in this regard.

ERP No. F-JUS-D81014-PA, Bradford Federal Correctional Institution Complex, Construction and Operation, PA. **SUMMARY:** EPA reviewed the final EIS and noted the resolution of our major concerns. However, EPA requested additional information to be included in the Record of Decision.

ERP No. F-SFW-L64030-AK, Togiak Nat'l Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Review, AK. **SUMMARY:** EPA made no formal comments. EPA reviewed the final EIS and found the project to be satisfactory.

Regulations

ERP No. R-CGD-A50156-00, 33 CFR Part 115, General Bridge Permit Program Regulations, Supplementary Notice (CGD 81-057) (51 FR 15503). **SUMMARY:** EPA recommended, that to avoid misunderstandings, the regulation should clearly state that the project must also comply with one of the existing items on the Coast Gard NEPA Categorical Exclusion list. EPA also suggested that a "kickout clause" be added to cover unusual situations.

Amended Notice

The following review should have appeared in the FR Notice published on June 6, 1986.

ERP No. DA-USN-E11006-GA, Rating LO, Kings Bay Fleet Ballistic Missile Submarine Support Base, North River Access Restriction, Contruction, GA. **SUMMARY:** EPA's review found the major issues which were delineated in the interagency scoping meeting to be adequately addressed in this EIS.

Dated: June 30, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-15096 Filed 7-2-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No.: FEMA-REP-2-NY-3]

The New York State and Local Emergency Preparedness Plans Site-Specific for the Robert E. Ginna Nuclear Power Generating Station; Certification of FEMA Findings and Determination

ACTION: Certification of FEMA findings and determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR 350, the State of New York submitted its plans relating to the Robert E. Ginna Nuclear Power Generating Station to the Director of FEMA Region II on August 19, 1981, for FEMA review and approval. On June 17, 1985, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and Support in accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the Robert E. Ginna facility; on evaluation of the joint exercises conducted on January 21, 1982, and June 22, 1983, in accordance with § 350.9 of the FEMA rule; and a public meeting held on May 5, 1982, to discuss the site-specific aspects of the State and local plans around the Robert E. Ginna Nuclear Power Generating Station in accordance with § 350.10 of the FEMA rule. Since the September 26, 1985, exercise was conducted after the "350" package was submitted to FEMA Headquarters, its evaluation was submitted in a separate report.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that the State and local plans and preparedness for the Robert E. Ginna Nuclear Power Generating Station are adquate to protect the health and safety of the public living in the vicinity of the plant. These offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. The adquacy of the public alert and notification system also has been verified as meeting the standards set forth in Appendix 3 of the Nuclear Regulatory Commission (NRC)/FEMA criteria or NUREG-0654/FEMA-REP-1, Revision 1, and in the Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants (FEMA-REP-10).

FEMA will continue to review the status of offsite plans and preparedness associated with the Robert E. Ginna Nuclear Power Generating Station in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA-REP-2-NY-2 maintained by the Regional Director, FEMA Region II, 26 Federal Plaza, Room 1349, New York, New York 10278.

Dated: June 25, 1986.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 86-15023 Filed 7-2-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-008900-034.

Title: The "8900" Lines Agreement.

Parties:

A.P. Moller-Maersk Line
Sea-Land Service, Inc.
The National Shipping Company of Saudi Arabia
United Arab Shipping Company (S.A.G.)
United States Lines
Waterman Steamship Corporation

Synopsis: The proposed amendment modifies the independent action provision of the Agreement.

Agreement No.: 202-010693-014.

Title: Florida/Caribbean Liner Association.

Parties:

Bernuth Lines Ltd.
Tecmarine Lines, Inc.
West Indies Shipping Corp.

Shipping Corporation of Trinidad and Tobago
Sea-Land Service, Inc.

Synopsis: The proposed amendment would modify the independent action provision of the agreement by deleting reference to sectionalization. The parties have requested a shortened review period.

Agreement No.: 202-010776-010.
Title: Asia North America Eastbound Rate Agreement.
Parties:
American President Lines, Ltd.
Barber Blue Sea
Hanjin Container Lines, Ltd.
Hyundai Merchant Marine Co., Ltd.
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Showa Line, Ltd.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would allow a party to disassociate itself from an agreement-wide rate reduction by submitting notice of its disassociation to the agreement 48 hours prior to the effective date of the rate change or at a meeting of the agreement in the event the change is to be effective less than 48 hours after the meeting.

Dated: June 30, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-15077 Filed 7-2-86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following person has filed an application for license as ocean freight forwarder with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why the following person should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573: Linda Jean Bailey, 16227 Waverly Drive, Houston, TX 77032.

Dated: June 30, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-15078 Filed 7-2-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-86-1620]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ACTION: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notices of Submission of Proposed Information Collection to OMB

Proposal: Request for Partial Payment of Annual Contribution Leased Projects
Office: Public and Indian Housing
Form Number: HUD-52977
Frequency of Submission: Quarterly
Affected Public: State or Local Governments
Estimated Burden Hours: 281
Status: Extension
Contact: John T. Comerford, HUD, (202) 426-1872, Robert Fishman, OMB, (202) 395-6880.

Dated: June 16, 1986.

Proposal: Neighborhood Development Demonstration Evaluation
Office: Policy Development and Research
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Non-Profit Institutions
Estimated Burden Hours: 272
Status: New
Contact: Joseph D. Panaro, HUD, (202) 755-7335; Robert Fishman, OMB, (202) 395-6880

Dated: June 16, 1986.

Proposal: Application for HUD/FHA Insured Mortgage
Office: Housing
Form Number: HUD-59100.1, 92004f, 92004g, 92544, 92561, 92900, and 92900-WS
Frequency of Submission: On Occasion
Affected Public: Individuals or Households and Businesses or Other For-Profit
Estimated Burden Hours: 1,606,834
Status: Revision
Contact: Ruth Studer, HUD, (202) 755-6700; Robert Fishman, OMB, (202) 395-6880.

Dated: June 16, 1986.

Proposal: Title I Property Improvement and Manufactured Home Programs (24 CFR Part 201)
Office: Housing
Form Number: HUD-9299, 55083, 56001, 56001(MH), 56004, 92802, FH-1(MH), and FM-13(MH)
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, Businesses or Other For-Profit and Small Businesses or Organizations

Estimated Burden Hours: 263,373
Status: Extension
Contact: James L. Anderson, HUD, (202) 755–6880; Robert Fishman, OMB, (202) 395–6880.

Dated: June 16, 1986.

Proposal: Rental Rehabilitation Program
Office: Community Planning and Development
Form Number: SF–424 and Narrative
Frequency of Submission: Annually
Affected Public: State or Local Governments
Estimated Burden Hours: 15,165
Status: Revision
Contact: Mary Kolesar, HUD, (202) 755–5970, Robert Fishman, OMB, (202) 395–6880.

Dated: June 16, 1986

Proposal: Application for Approval as Direct Endorsement Mortgagee/ Underwriter Certification
Office: Housing
Form Number: HUD–54112 and 54113
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 301,900
Status: Extension
Contact: Morris Carter, HUD, (202) 755–5676, Robert Fishman, OMB, (202) 395–6880.

Dated: June 16, 1986.

Proposal: Computation of Payments in Lieu of Taxes
Office: Public and Indian Housing
Form Number: HUD–52267
Frequency of Submission: Annually
Affected Public: State or Local Governments
Estimated Burden Hours: 1,400
Status: Extension
Contact: John T. Comerford, HUD, (202) 426–1872, Robert Fishman, OMB, (202) 395–6880.

Dated: June 16, 1986.

Proposal: Application for Approval as a Mortgage-Backed Securities Issuer
Office: Government National Mortgage Association
Form Number: HUD–11701
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit and Small Businesses or Organizations
Estimated Burden Hours: 75
Status: Extension
Contact: Patricia Gifford, HUD, (202) 755–5550, Robert Fishman, OMB, (202) 395–6880.

Dated: June 23, 1986.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Donald J. Keuch, Jr.,
Deputy Assistant Secretary.

[FR Doc. 86–15003 Filed 7–2–86; 8:45 am]
BILLING CODE 4210–01–M

Office of the Secretary

[Docket No. N–86–1621]

Privacy Act of 1974; Proposed Amendment to a System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: The Department is giving notice that it intends to amend the following Privacy Act system of records: HUD/DEPT–32, Delinquent/Default/ Assigned/Temporary Mortgage Assistance Payments (TMAP) Program.

EFFECTIVE DATE: This amendment shall become effective without further notice in 30 calendar days (August 4, 1986) unless comments are received on or before the date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Arthur L. Stokes, Departmental Privacy Act Officer, Telephone (202) 755–6374. This is not a tool-free number.

SUPPLEMENTARY INFORMATION: HUD/ DEPT–32 contains information concerning Mortgagors with HUD/FHA insured single family mortgages that are delinquent or in default; mortgagors seeking assistance to prevent foreclosures; and mortgagors whose mortgages are held by HUD. An analysis of early defaults and claims has revealed that a number of borrowers have omitted critical mortgage credit information which, if known at origination, would have caused the applicants to be rejected.

The Department now intends to establish a new routine use for HUD/ DEPT–32. Lists of mortgagors with loans in default, or with loans on which the Department has paid a claim, will be compiled. These lists will be distributed to Title II approved mortgage lenders to verify information provided by new loan applicants and to evaluate the credit worthiness of applicants. The amended portion of the system notice is set forth below. Previously, the system and a prefatory statement containing the general Routine Uses applicable to most of the Department's system of records were published in the "Federal Register Privacy Act Issuances, 1984 Compilation, Volume II."

Authority: 5 U.S.C. 552a, 88 Stat. 1896; section 7(d) Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, DC, June 19, 1986.

Judith L. Tardy,
Assistant Secretary for Administration.

HUD/DEPT–32

SYSTEM NAME:

Delinquent/Default/Assigned/ Temporary Assistance Payments (TMAP) Program.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: To FHA—for insurance investigations; to IRS and GAO—for investigations; to state banking agencies—to aid in processing mortgagor complaints; to state housing and redevelopment agencies—for follow-up servicing; to mortgagees—to check on the status of cases and referrals of complaint; to mortgagees—to verify information provided by new loan applicants and to evaluate credit worthiness; to counseling agencies—for counseling; to Legal Aid—to assist mortgagors; to HUD TMAP contractor—for processing TMAP; to other Federal agencies for the purposes of collecting debts owed to the Federal Government by administrative or salary offset.

* * * * *

[FR Doc. 86–15004 Filed 7–2–86; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6665–B]

Alaska Native Claims Selection; Isanotski Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Isanotski Corporation for approximately 1 acre in the vicinity of False Pass, Alaska, within T. 60 S., R. 94 W., Seward Meridian, Alaska.

A notice of the decision will be published once in the Aleutian Eagle

and once a week for four (4) consecutive weeks in The Anchorage Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960.)

Any party claiming a property interest which is adversely affected by the decision shall have until August 4, 1986 to file an appeal. 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 can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86–15122 Filed 7–2–86; 8:45 am]

BILLING CODE 4310-JA-M

Fossil Falls Area of Critical Environmental Concern (ACEC)

AGENCY: Bureau of Land Management, Interior.

ACTION: Implementation of the management plan for the fossil falls area of critical environmental concern (ACEC).

SUMMARY: The California Desert Conservation Area Plan identified the Fossil Falls ACEC as an area with significant cultural resources which require special management attention. The Fossil Falls ACEC includes approximately 1580 acres of public land managed by the Bureau of Land Management in T. 22 S., R. 38 E., S. 31 and 32; T. 23 S., R. 38 E., S. 5, 6, and 8, MDM, Inyo county. The authorities for the Management Plan are 43 CFR 8000.0–6, 8360, 8364, and 8365; Archaelogical Resources Protection Act of 1979; Federal Land Policy and Management Act of 1976; and National Environmental Policy Act of 1970.

The development of the Management Plan included public involvement. The plan makes recommendations for the management of cultural resources and scenic and recreational values. The recommendations are compatible with other uses, such as conservation of wildlife and continuation of rights-of-way. The ACEC will remain open to uses not in conflict with the Management Plan. The plan recommends that total inventory and recordation of cultural resources within the ACEC be accomplished; consideration be given to reconciliation of the ACEC and National Register district boundaries; firearms be prohibited within the ACEC for the safety of the public; the foot trail which leads from the parking area to Fossil Falls be marked; the parking area be signed as "day use only" and other appropriate areas be signed as campsites; picnic tables and benches be installed within the parking area; a geological interpretive sign be developed and installed; consideration be given to acquiring private land adjacent to the western boundary of the ACEC; the ACEC be monitored to protect cultural resources.

EFFECTIVE DATE: Immediately.

ADDRESS: The Management Plan, including a map of the ACEC and public comments, will be available at the Ridgecrest Resources Area office, 112 E. Dolphin Street, Ridgecrest, CA 93555 from 7:30 a.m. until 4:00 p.m. on normal workdays.

FOR FURTHER INFORMATION CONTACT: Joan Oxendine, Ridgecrest Resource Area, 112 E. Dolphin Street, Ridgecrest, California, (619) 375–7125.

Dated: June 25, 1986.

H.W. Riecken,

Acting District Manager.

[FR Doc. 86–15121 Filed 7–2–86; 8:45 am]

BILLING CODE 4310-40-M

[A–21966, A–22103]

Minerals Interest Applications; Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of receipt of conveyance of mineral interest application.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Lester and Eloise Hayt have applied to purchase the mineral estate described as follows:

Gila and Salt River Meridian, Arizona

T. 6 N., R. 4 E., GSR Mer., Arizona.
Sec. 15, NW¼NE¼;
Sec. 17, NE¼SE¼;
Sec. 24, W½NE¼NE¼NW¼.

Additional information concerning these applications may be obtained from the Area Manager, Phoenix Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this Notice in the **Federal Register**, the mineral interest described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application, or two years from the date of filing of the application, May 9, 1986, whichever occurs first.

Dated: June 27, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86–15120 Filed 7–2–86; 8:45 am]

BILLING CODE 4310-32-M

[A–21634]

Public Land Classification; Mohave County, AZ

AGENCY: Bureau of Land Management—Interior.

ACTION: Notice of realty action, classification for recreation and public purposes, Mohave County, AZ.

SUMMARY: The following public land has been examined and found suitable for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869 et seq.).

Gila and Salt River Meridian, Arizona

T. 25 N., R. 19 W.,
Sec. 10, E½NW¼SE¼NW¼.
Containing 5 acres, more or less.

The classification shall become effective sixty (60) days after the publication of this notice in the **Federal Register.**

The proposed use of the public land is for an American Legion Post.

A lease with the option to patent shall be offered to the American Legion. The lease and patent will be subject to the following conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way (R/W) for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Those rights for power and telephone line purposes granted to Citizens Utilities Company by R/W A–18556 and A–11587.

5. Those rights for county road purposes granted to Mohave County by R/W A–20863.

Detailed information concerning these terms and provisions is available for review at the Kingman Resource Area

Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

Publication of this notice shall segregate the land from all appropriations under the public land laws including location under the mining laws but not from appropriations under the mineral leasing laws, the R&PP Act or Title V of the Federal Land Policy and Management Act of 1976.

For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: June 27, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86-15123 Filed 7-2-86; 8:45 am]

BILLING CODE 4310-32-M

[WY-040-06-4212-11; WY 89433]

Realty Action, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reality action W-89433, recreation and public purposes classification and application for lease of public lands in Sublette County, Wyoming.

SUMMARY: The following described public lands near the community of Pinedale, Wyoming, have been examined and identified as suitable for lease for public use. The lands will be classified for lease under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.)

Sixth Principal Meridian

T. 33 N., R. 110 W.,
Sec. 2, Lot 1, N½SE¼NE¼.
The area described contains 60.86 acres.

The Board of County Commissioners, Sublette County, Wyoming, intends to use the land for a sanitary landfill. The lands are physically suited to the proposed use. The proposed use would be in the public interest and is in conformance with the Bureau's planning for the lands involved.

A lease issued under this notice will reserve to the United States all mineral deposits in said lands, together with the right to mine and remove the same under applicable laws and regulations. Such a lease will also be subject to the provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

Upon publication of this notice in the **Federal Register**, the above-described land will be segregated from all appropriations except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act.

Comments: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments in writing to the Area Manager, Pinedale Resource Area, Box 768, Pinedale, Wyoming 82941. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this notice will become effective 60 days from the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: W. DeLon Potter, Area Manager, Pinedale Resource Area, Bureau of Land Management, P.O. Box 768, Pinedale, Wyoming 82941, 307-367-4358.

W. DeLon Potter,

Area Manager.

[FR Doc. 86-15124 Filed 7-2-86; 8:45 am]

BILLING CODE 4310-22-M

[OR-943-06-4520-12: GP6-278]

Filing of Plat of Survey; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described land will be officially filed at 8:30 a.m., August 8, 1986, in the Oregon State Office, Portland, Oregon.

Willamette Meridian

T. 7 S., R. 2 E.,
Secs. 1, 3, 15, 17, 21, 23, and 25.
The plat representing a dependent resurvey and subdivision of sections returning areas of unsurveyed land totaling 236.12 acres was accepted May 30, 1986.

The lands included in the foregoing surveys are located about six miles southeast of Scotts Mills, Oregon. Access is by way of Crooked Finger Road which passes southeasterly through the center of the township, and Sawtell Road which passes southeasterly through the northeast corner of the township, and numerous gravelled roads branching from them.

Elevations range from about 1,050 feet above sea leval at the ¼ section corner of sections 3 and 4, to about 2,600 feet above sea level near the ¼ section corner of sections 24 and 25. The soil is rocky clay.

All sections are predominatly timber land consisting of fir, hemlock, cedar, alder, and maple. The undergrowth consists of vine maple, hazel, blackberry, huckleberry, poison oak, salal, Oregon grape, fern, and grasses. All sections, except section 25, contain small farms used for grazing and growing hay.

The area is drained by Abiqua and Butte Creeks, which flow northwesterly through the township.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE. Multnomah, P.O. Box 2965, Portland, Oregon 97208.

Dated: June 24, 1986.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-15009 Filed 7-2-86; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-06-4520-12: GP6-226]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon, on the dates hereinafter stated.

Willamette Meridian

T. 25 S., R. 13 W.,
T. 23 N., R. 18 E.,
T. 23 N., R. 19 E.

Above listed plats were officially filed March 17, 1986.

T. 34 S., R. 4 E.,
T. 8 N., R. 13 E.,
T. 21 N., R. 13 W.,
T. 28 N., R. 15 W.

Above listed plats were officially filed April 2, 1986.

T. 32 S., R. 5 W.,
T. 18 S., R. 6 W.,
T. 10 S., R. 27 E.

Above listed plats were officially filed April 10, 1986.

T. 35 S., R. 8 W.,
T. 11 S., R. 19 E.,
T. 32 S., R. 40 E.

Above listed plats were officially filed April 23, 1986.

All of the listed plats represent dependent and corrective resurveys, amended lottings, and subdivisional lines.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE

Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: June 24, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-15010 Filed 7-2-86; 8:45 am]

BILLING CODE 4310-33-M

[NM-023138]

New Mexico; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 22.50-acre withdrawal for the Department of Agriculture, Forest Service continue for an additional 20 years. The lands will remain withdrawn from appropriation under the United States mining laws and will remain open to leasing under the mineral leasing laws. The lands will be open to operation under the public land laws.

DATE: Comments should be received by October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, NM, 87504-1449, (505) 988-6589.

The Department of the Interior proposes that the existing land withdrawal made by Public Land Order 1817 of March 12, 1959, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest—Cole Springs Recreation Area

T. 11 N., R. 5 E. (unsurveyed)

Sec. 34, that area within the Cibola National Forest (which may be, when surveyed) in the SE¼SW¼NE¼, SW¼SE¼NE¼, NW¼NE¼SE¼, and NE¼NW¼SE¼, excluding that portion lying within the boundary of the Sandia Mountain Wilderness (Pub. L. 95-237)

The area described contains approximately 22.50 acres in Bernalillo County.

The purpose of the withdrawal is for use in connection with the Cibola National Forest, Sandia Ranger District. The area has been developed for public recreational use and is heavily utilized for this purpose.

The withdrawal segregates the land from location and entry under the mining laws. The lands will be open to operation under the public land laws and have been and will remain open to leasing under the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Monte G. Jordan,

Associate State Director.

[FR Doc. 86-15029 Filed 7-2-86; 8:45 am]

BILLING CODE 4310-FB-M

(NM-016109)

New Mexico; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 240.00-acre withdrawal for the Department of Agriculture, Forest Service continue for an additional 20 years. The lands will remain withdrawn from appropriation under the United States mining laws and will remain open to leasing under the mineral leasing laws. The lands will be open to operation under the public land laws.

DATE: Comments should be received by October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kay Thomas, BLM, New Mexico State Office, P.O. Box 1449, Santa Fe, NM 87504-1449, (505) 988-6589.

The Department of the Interior proposes that the existing land withdrawal made by Public Land Order 1030 of November 15, 1954, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest—New Canyon Campground and Recreation Area

T. 5 N., R. 5 E.,

Sec. 10, NW¼SW¼.

The area described contains 40.00 acres.

Fourth of July Campground and Recreation Area

T. 7 N., R. 5 E.,

Sec. 35, S½NE¼, S½N½NE¼, N½N½SE¼.

The area described contains 160.00 acres.

Tajique Picnic Ground and Recreation Area

T. 6 N., R. 6 E.,

Sec. 8, SE¼SW¼NE¼, SW¼SE¼NE¼, NW¼NE¼SE¼, NE¼NW¼SE¼.

The area described contains 40.00 acres.

The purpose of the withdrawal is for use in connection with the Cibola National Forest, Mountainair Ranger District. These areas have been developed for recreational use and are heavily utilized for this purpose.

The withdrawal segregates the lands from location and entry under the mining laws. The lands will be open to operation under the public land laws; they have been and will remain open to the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dennis R. Erhart,

Acting State Director.

[FR Doc. 86-15030 Filed 7-2-86; 8:45 am]

BILLING CODE 4310-FB-M

Realty Action, Classification of Public Lands for Recreation and Public Purposes, Serial Number CA-18113, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, lease/conveyance of lands for recreation and public purposes.

SUMMARY: The following described land has been examined and found suitable for lease or conveyance for recreation public purposes. The land is hereby classified as suitable for recreation and public purposes under the Recreation and Public Purposes Act of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869,

et seq.) and the regulations thereunder (43 CFR Parts 2740 and 2912):

San Bernardino Meridian, California

T. 2N., R. 6E.,
Sec. 7, W½ Lot 2 of NW¼;W½SE¼NW¼; W½E½SW¼;E½W½SW¼.

Containing 148.8 acres.

The Landers Association, Inc. has filed an application to purchase the above described land under the said Act of June 14, 1926 for use as a community park. The land will be leased during the development stage. Upon substantial completion of the approved plan of development, the land will be conveyed.

The effective date of this classification is sixty (60) days from the date of publication of this notice in the **Federal Register**. The classification is consistent with the regulations set forth in 43 CFR Parts 2410 and 2430. The tract is situated near significant population centers and convenient access is provided by paved county roads. The site is physically suitable for public use purposes.

The terms and conditions applicable to conveyance or lease of the land under said Act of June 14, 1926 are:

1. Reservations to the United States:

1. A right-of-way for ditches or canals constructed by authority of the United States. Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect, mine and remove such deposits from the same under appliable laws.

II. Rights of third parties: The conveyance of this land by a patent is subject to all valid existing rights, including:

3. Those rights for an electric distribution line right-of-way granted to Southern California Edison Company under the Act of March 4, 1911 (36 Stat. 1253; 43 U.S.C. 961); Grant No. R–1537.

4. Those rights for a buried water pipeline and service road right-of-way granted to the Bighorn Mountains Water Agency under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761); Grant No. CA–5232.

5. Rights-of-way for roadways and public utility purposes around the boundaries of parcel along all section and quarter section lines subject to a 40-foot width and a 33-foot width along all other parcel boundaries under the Act of October 21, 1976 (90 Stat. 2757; 43 U.S.C. 1718).

III. Conveyance documents will contain a covenant requiring all future developments to be in conformance with Ordinance 2417, adopted by the San Bernardino County Board of Supervisors on May 3, 1980. The ordinance regulates development in flood hazard/flood plains, and implements National Flood Insurance requirements (Executive Order 11988 of May 24, 1977).

Publication of this notice in the **Federal Register** shall segregate the subject public land from appropriation under any other public land law, including location under the mining laws. The segregative effect will end upon issuance of a patent, or 18 months from the date of publication if the application is withdrawn.

For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, 1695 Spruce Street, Riverside, CA 92507. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: June 24, 1986.

H. W. Riecken,

Acting District Manager.

[FR Doc. 86–15148 Filed 7–2–86; 8:45 am]

BILLING CODE 4310–40–M

Camping and Firearms Use Restriction Order for the South Yuba Recreation Area, CA; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In FR Doc. 86–11553, on page 18848, in the issue of Thursday, May 22, 1986, make the following correction:

Day use only will be allowed one-quarter mile downstream and one-half mile upstream from Edwards Crossing.

Dated: June 24, 1986.

David N. Harris,

Assistant Area Manager.

[FR Doc. 86–15012 Filed 7–2–86; 8:45 am]

BILLING CODE 4310–40–M

[C–43908]

Colorado; Proposed Withdrawal; Opportunity for Public Hearing

June 20, 1986.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This document gives notice of the filing of a withdrawal application, requests public comment and closes certain National Forest System lands to mineral location and entry for 2 years. The U.S. Department of Agriculture, through the Forest Service, has requested the withdrawal of this land to protect planned recreational facilities and values in the Breckenridge Ski Area. The 2 year period will allow the Forest Service to prepare the necessary reports and studies and to prepare their justification from this data. The Secretary of the Interior will make a final determination on the proposed withdrawal.

EFFECTIVE DATE: Segregation of the land will be effective on July 3, 1986; comments or requests for hearing must be received on or before October 1, 1986.

ADDRESS: Comments and requests for hearing should be addressed to the State, Director, BLM Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, (303) 294–7635.

The Forest Service proposes that the Secretary of the Interior make a withdrawal of National Forest System land for the protection of planned recreational facilities and values. The proposed withdrawal would close the land to mineral location and entry for 100 years and would affect the following described land:

Sixth Principal Meridian

White River National Forest

T. 7 S., R. 78 W.,
Sec. 1, Lots 5, 6, 9, 10, 11, 12, S½SE¼, and that portion of SW¼ formerly occupied by M.S. 13846 (cancelled);
Sec. 3, S½SE¼ and S½N½SE¼;
Sec. 10, N½NE¼;
Sec. 11, N½, SE¼, and NE¼SW¼;
Sec. 12, N½ and SW¼.

The area described aggregates approximately 1,450 acres of National Forest System lands in Summit County.

Effective on July 3, 1986, these lands are segregated from mineral location and entry under the United States mining laws. The land will continue to be administered by the Forest Service. The segregative effect of this pending application will terminate 2 years from the date of this publication unless final withdrawal action is taken or the application is terminated prior to that date. Notice of any action will be published in the **Federal Register**.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal may present their views in writing to the State Director, Colorado State Office.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that

an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on this proposed action must submit a written request for a hearing to the Colorado State Director within 90 days from the date of this publication.

If it is determined that a public hearing should be held, notice of the time and place of the hearing will be published in the **Federal Register** at least 30 days prior to the hearing. The hearing will be scheduled and conducted in accordance with Bureau of Land Management Manual, section 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. The authorized office will also undertake negotiations with the applicant agency to assure that the area sought is the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the land for purposes other than the applicant's, and to reach an agreement on the concurrent management of the land and its resources.

The authorized officer will prepare a report for consideration by the Secretary of the Interior who will determine whether or not the land will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on this application will be published in the **Federal Register.**

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-15044 Filed 7-2-86; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Nowitna National Wildlife Refuge Draft Comprehensive Conservation Plan/ Environmental Impact Statement, Wilderness Review and Wild River Plan, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has prepared for public review a draft Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), Wilderness Review and Wild River Plan for the Nowitna National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1), 605, 1008 and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), section 3(d) of the Wilderness Act of 1964, section 102(2)(C) of the National Environmental Policy Act of 1969, and the Wild and Scenic Rivers Act of 1968. The draft CCP/EIS describes four alternative strategies for long-term management of the 1,876,500 acre refuge.The plan also reviews these lands as to their suitability under each management alternative for possible addition to the National Wilderness Preservation System.

DATE: Comments on the draft CCP/EIS must be submitted on or before October 9, 1986, to receive consideration by the Regional Director.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503-6199 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: Williiam Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudo Road, Anchorage, AK 99503-6199, telephone (907) 786-3399.

A draft CCP/EIS has been prepared for general distribution. Copies of the draft Comprehensive Conservation Plan will be sent to all persons and organizations who participated in scoping or alternative workshops, and to agencies and persons who have already requested copies. Those wishing to receive a copy of the draft may obtain one by contacting Mr. Knauer. Copies of the draft CCP/EIS are also available for review at the above location, at the Nowitna National Refuge Headquarters, P.O. Box 287, Galena, AK 99741, telephone (907) 656-1231, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, 18th and C Streets NW., Department of the Interior, Washington, DC 20240

U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE., Multnomah Street, Portland, OR 97232

U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue, SW., Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Boulevard, Lakewook, CO 80225

SUPPLEMENTARY INFORMATION: The draft CCP/EIS for the Nowitna National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of sections 304, 605 and 1008 of ANILCA, section 3(b) of the Wild & Scenic River Act, and section 13179(a) of ANILCA and section 3(d) of the Wilderness Act relating to refuge lands not Congressionally designated as Wilderness.

Major issues addressed by the plan include trapping; wildlife, hunting and habitat; transportation and access; timber harvest; wild river use and development; and fisheries. The draft CCP/EIS addresses four alternatives for long-range management of the refuge including one that would continue current minimal management with no oil or gas leasing allowed. Another would recommend 100% of the refuge for wilderness designation, with no development or oil and gas leasing allowed. The third alternative would recommend 17% of the refuge for wilderness designation and the rest for minimal management; no oil and gas leasing would be allowed. The final alternative would keep all of the refuge under minimal management except for the islands in the Yukon River. These islands would be under moderate management with commercial timber harvest and oil and gas leasing allowed subject to site-specific compatibility determinations. A preferred alternative is identified.

A detailed map and legal description of the boundary proposed for the wild river corridor is contained with the plan. This boundary does not vary across the alternatives. The corridor is managed the same way under all alternatives.

The plan also addresess the general wilderness suitability of 1,876,500 acres of non-designated wilderness refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-designated wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his recommendations to the President.

The Notice of Intent to prepare the CCP/EIS, Wilderness Review, and Wild River Plan was published in the Thursday, January 24, 1985, **Federal Register.** Other government agencies and the general public contributed to the development of this draft CCP/EIS,

Wilderness Review, and Wild River Plan.

Dated: June 27, 1986.

Robert E. Gilmore,

Regional Director.

[FR Doc. 86-15027 Filed 7-2-86; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

Salmon Gill Fish Netting of Manmade Fibers From Japan; Request for Comments Concerning the Institution of a Section 751(b) Review Investigation

AGENCY: International Trade Commission.

ACTION: Request for comments regarding the institution of a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. AA1921-85, Fish Nets and Netting of Manmade Fibers from Japan.

SUMMARY: The Commission invites comments from the public on whether changed circumstances exist which warrant the institution of an investigation pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review the Commission's affirmative determination in investigation No. AA1921-85, regarding fish nets and netting of manmade fibers from Japan, provided for in item 355.45 of the Tariff Schedules of the United States (TSUS). The purpose of the proposed section 751(b) review investigation, if instituted, would be to determine whether an industry in the United States would be materially injured, would be threatened with material injury, or the establishment of an industry would be materially retarded, by reason of imports of salmon gill fish netting of manmade fibers from Japan if the antidumping duty order is modified or revoked with respect to such merchandise, provided for in TSUS item 355.45.

FOR FURTHER INFORMATION CONTACT: Martha Mitchell (202-523-6620), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION: On April 18, 1972, the Commission determined that an industry in the United States was injured within the meaning of the Antidumping Act, 1921, by reason of imports of fish netting of manmade fibers from Japan determined by the Secretary of Treasury to be sold or likely to be sold at less than fair value (investigation No. AA1921-85). On June 1, 1972, the Department of the Treasury issued a dumping order, T.D. 72-158, and published notice thereof in the **Federal Register** (37 FR 11560, June 9, 1972).

On October 14, 1981, following receipt of a request to review its affirmative determination in investigation No. AA1921-85, the Commission instituted investigation No. 751-TA-5, Salmon gill fish netting of manmade fibers from Japan. On March 31, 1982, the Commission unanimously determined that the establishment of an industry in the United States would be materially retarded by reason of imports of salmon gill fish netting of manmade fibers from Japan, covered by antidumping order T.D. 72-158, if the order were to be modified or revoked.

On January 25, 1983, following receipt of a request to review its affirmative determination in investigation No. AA1921-85, the Commission instituted investigation No. 751-TA-7, Salmon gill fish netting of manmade fibers from Japan. On May 24, 1983, the Commission determined that an industry in the United States would be materially injured by reason of imports of salmon gill fish netting of manmade fibers from Japan, covered by antidumping order T.D. 72-158, if the order were to be modified or revoked.

On June 20, 1986, the Commission received a request to review and modify its affirmative determination in investigation No. AA1921-85. The request was filed pursuant to section 751(b) of the Tariff Act of 1930 by George R. Tuttle on behalf of Seattle, Washington/Portland, Oregon importers of salmon gill fish netting, including Seattle Marine and Fishing Supply Co., Redden Net Co., and LSS, Inc., (formerly Lummi Fishery Supply Co.). The petition requests that the Commission revoke that portion of the outstanding order dealing with salmon gill fish netting retroactively to June 1, 1972.

Written Comment Requested:

Pursuant to 207.45(b)(2) of the Commission's Rules of Practice and Procedure (19 CFR 207.45(b)(2)), the Commission requests public comments concerning whether the following changed circumstances alleged in the request for review are sufficient to warrant institution of a review investigation: (1) Nichimo Northwest, Inc., the major producers of salmon gill fish netting in the United States, ceased production of salmon gill fish netting on November 30, 1984, has not resumed production, and has no intention of resuming production of this product; (2) Harbor Net and Twine, Inc., the only other known commercial producer of salmon gill fish netting in the United States, has been making primarily netting for sturgeon fishing and diver nets for salmon, has been making little, if any, salmon gill fish netting, and would not be adversely affected by retroactive revocation or modification of the order since it is a minor producer of the subject merchandise for a specialized market; and (3) Nylon Net. Co., a potential producer, has ceased production of all fish netting, and on May 9, 1985, filed a voluntary petition under Chapter 11 with the United States Bankruptcy Court.

Additional Information

Under § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), the signed original and 14 true copies of all written submissions must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436. All comments must be filed no later than 30 days after the date of publicaton of this notice in the **Federal Register.** Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request business confidential treatment under § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Such request should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Each sheet must be clearly marked at the top "Confidential Business Data." The Commission will either accept the submission in confidence or return it. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Copies of the request for review of the injury determination and any other public documents in this matter are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commissin, 701, E Street, NW., Washington, DC 20436; telephone 202-523-0161.

Issued: June 30, 1986.

By order of the Commission

Kenneth R. Mason,

Secretary.

[FR Doc. 86-15101 Filed 7-2-86; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Methylenedianiline Negotiated Rulemaking Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Appointment of members to the Methylenedianiline Negotiated Rulemaking Advisory Committee and notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of the appointment of members to the 4,4'-Methylenedianiline (MDA) Negotiated Rulemaking Advisory Committee and of the first meeting of the Committee to be held at the Frances Perkins Department of Labor Building, 200 Constitution Ave. NW., Rm. N3437 C and D, Washington, DC 20210.

DATES: July 22–24, 1986—10:00 a.m. to 5:00 p.m.

ADDRESS: Submissions presented in response to this notice should be sent in quadruplicate to the Docket Officer, Docket No. H–040, Room N3670, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210; (202) 523–7894. Written comments received, as well as other information in Docket H–022, will be available for inspection and copying at this address, Monday through Friday, 8:15 a.m. to 4:45 p.m.

Status: This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523–8615.

SUPPLEMENTARY INFORMATION: On October 22, 1985, OSHA announced its intent to make use of negotiated rulemaking in developing a proposed standard for MDA (50 FR 42790–42793). This notice also set forth the basic concepts of negotiated rulemaking and outlined the participant selection criteria which OSHA expected to use in establishing an MDA Negotiated Rulemaking Committee.

OSHA established the committee in accordance with the Federal Advisory Committee Act (FACA) and section 7(b) of the Occupational Safety and Health Act (OSH Act) to negotiate issues associated with the development of a Notice of Proposed Rulemaking on MDA.

Appointees to the committee include representatives from labor, industry, health and safety groups, and government agencies. The appointees also represent groups interested in, or affected by, the outcome of the proposed rule.

Participants wishing to submit written statements to the Committee that are germane to the agenda may do so, provided that such statements are in reproducible form and are submitted to the OSHA Division of Consummer Affairs at least 5 days before the meeting.

In addition, members of the general public may request an opportunity to make oral presentations to the Committee. Such statements must be applicable to the announced agenda and written application must be submitted to Mr. Tom Hall of the Office of Consumer Affairs at least 5 days before the meeting. This application should include: name and address of applicant, subject of presentation, relation to agenda, amount of time needed, individual's qualifications to speak on the subject, and a statement justifying the need for an oral presentation rather than written statement.

The Mediator or Chairman of the Committee has the authority to decide to what extent oral presentations by members of the public may be permitted at the meeting. Oral presentations will be limited to statements of fact and views, and shall not include any questioning of the committee members or other participants unless these questions have been specifically approved by the Mediator/Chairman.

Although Part 1912 of Title 29 of the Code of Federal Regulations will apply generally, the quorum and reporting requirements have been changed to help meet the special needs of this committee. Specifically, § 1912.33 requires that verbatim transcripts be kept of all advisory committee meetings. Since producing a coherent transcript requires a certain degree of formality, the Assistant Secretary has determined pursuant to § 1912.42 that such formality might interfere with the free exchange of information and ideas during the negotiations, and that the Act would be better served by simpy requiring detailed minutes of the proceedings without a formal transcript. Regarding the quorum, § 1912.30 defines a quorum as a majority of the members so long as there are present at least one member who is a representative of employees and one who is a representative of employers. If this exercise is to be effective, it is OSHA's opinion that it requires the full and active participation of each member. It is believed that making the quorum requirements more restrictive will help to promote such participation. Therefore, the quorum requirements will be changed to reflect that two members representing employers and two representing employees must be present.

Minutes of the meetings and materials prepared for it will be available for public inspection at the OSHA Docket Office, U.S. Department of Labor, Rm N–3663, 200 Constitution Ave., NW., Washington, DC 20210; Telephone (202) 523–7894.

Signed in Washington, DC, this 30th day of June 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 86–15045 Filed 7–2–86; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (86–44)]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATE AND TIME: July 23, 1986, 8:30 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, 600 Independence Avenue, SW., Room 226A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne O. Teague, Office of Aeronautics and Space Technology; Telephone: Area Code 202/453–2727.

SUPPLEMENTARY INFORMATION: The Aeronautics Advisory Committee was established to provide overall guidance and direction to the Aeronautics reseach and technology activities in the Office of Aeronautics and Space Technology (OAST). The Committee, chaired by Mr. Robert B. Ormsby, is comprised of 20 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the Committee members and other participants).

Type of Meeting: Open.

Agenda

July 23, 1986

8:30 a.m. Opening Remarks.
9:30 a.m. Discussion of Committee Functions.
10 a.m. Fiscal Year 1988–1992 Aeronautics Planning and New Initiative Candidates.
1. p.m. Discussion of Ad Hoc Committee Activities.
3:30 p.m. General Discussions.
4:30 p.m. Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

June 24, 1986.

[FR Doc. 86–14997 Filed 7–2–86; 8:45 am]

BILLING CODE 7510-01-M

[Notice (86–45)]

NSAS Advisory Council, Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee.

DATE AND TIME: July 25, 1986, 8:30 a.m. to 3:30 p.m.

ADDRESS: National Aeronautics and Space Administration, 600 Independence Avenue, SW., Room 226A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne O. Teague, Office of Aeronautics and Space Technology; Telephone: Area Code 202/453–2727.

SUPPLEMENTARY INFORMATION: The Space Systems and Technology Advisory Committee was established to provide overall guidance and direction to the space research and technology activities in the Office of Aeronautics and Space Technology (OAST). The Committee, chaired by Mr. Norman Augustine, is comprised of 20 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the Committee members and other participants).

Type of Meeting: Open.

Agenda

July 25, 1986

8:30 a.m. Opening Remarks.
9 a.m. Fiscal Year 1988–1992 Space Research and Technology Planning and New Initiative Candidates.
1 p.m. Automation and Robotics Ad Hoc Subcommittee Report.
2 p.m. Summary Comments from Last Meeting.
2:30 p.m. Discussion of Future Ad Hoc Activities.
3:30 p.m. Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

June 26, 1986.

[FR Doc. 86–14998 Filed 7–2–86; 8:45 am]

BILLING CODE 7510-01-M

[Notice 86–46]

National Commission on Space; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the National Commission on Space.

DATE AND TIME: July 26, 1986, 9 a.m. to noon.

ADDRESS: Comptroller of Currency Conference Room, 3rd floor, 490 L'Enfant Plaza East SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mrs. Mechthild E. "Mitzi" Peterson, National Commission on Space, Suite 3212, 490 L'Enfant Plaza East SW., Washington, DC 20024 (202/453–8685).

SUPPLEMENTARY INFORMATION: The National Commission on Space was established to study existing and proposed U.S. space activities; formulate an agenda for the U.S. space program; and identify longrange goals, opportunities, and policy options for civilian space activity for the next 20 years. The Commission, chaired by Dr. Thomas O. Paine, consists of 15 voting members. The purpose of this final meeting is to discuss administrative matters.

Type of Meeting: Open.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

June 24, 1986.

[FR Doc. 86–14999 Filed 7–2–86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge Ad Hoc Review Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge Ad Hoc Review Committee to the National Council on the Arts will be held on July 23–24, 1986, from 9:00 a.m.–5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW. Washington, DC 20506.

This meeting is 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. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 27, 1986.

John H. Clark,

Director, Council and Panel Operationals National Endowment for the Arts.

[FR Doc. 86–15038 Filed 7–2–86; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Design Advancement/ Organizations Section to the National Council on the Arts will he held on July 21–22, 1986, from 9:00 a.m. to 8:30 p.m., and on July 23, 1986, from 9:00 a.m.–8:00 p.m. in rooms M–09 and M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting will be open to the public on July 23, from 7:00 p.m. to 8:00 p.m., for a policy discussion.

The remaining sessions of this meeting on July 21–22, 1986, from 9:00 a.m.–8:30 p.m.; and on July 23, from 9:00 a.m.– 7:00 p.m., 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. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–15039 Filed 7–2–86; 8:45 am]

BILLING CODE 7537–01–M

Design Arts and Visual Arts Advisory Panels; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Joint Collaboration Initiative Sections of the Design Arts Advisory Panel and the Visual Arts Advisory Panel to the National Council on the Arts will be held on July 24, 1986, from 9:00 a.m.—5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is 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. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 27, 1986.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–15040 Filed 7–2–86; 8:45 am]

BILLING CODE 7537–01–M

Program Initiative for interdisciplinary Artists Ad Hoc Review Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Ad Hoc Review Committee for the Program Initiative for Interdisciplinary Artists, a joint program with the Rockefeller Foundation, will be held on July 17, 1986, from 9:00 a.m. to 5:30 p.m., in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC, 20506.

A portion of this meeting will be open to the public on July 17, from 3:30 p.m. to 4:30 p.m., for a policy discussion.

The remaining sessions of this meeting on July 17, 1986, from 9:00 a.m.–3:30 p.m.; and from 4:30 p.m.–5:30 p.m., 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. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: June 27, 1986.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–15037 Filed 7–2–86; 8:45 am]

BILLING CODE 7537–01–M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Art in Public Places-Letter of Intent Section) to the National Council on the Arts will be held on July 22–23, 1986, from 9:00 a.m.—6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is 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. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: June 27, 1986.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–15041 Filed 7–2–86; 8:45 am]

BILLING CODE 7537–01–M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by July 22, 1986.

ADDRESSES: Send comments to Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, DC 20503; (202–395–6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the reinstatement of two previously approved collections for which approval has expired, and approval for a current collection which has been revised. Each entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) the OMB number, if applicable; (3) how often the required information must be reported; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to prepare the form. These entries are not subject to 44 U.S.C. 3504 (h).

Title: Literature Application Guidelines FY 1988.
OMB Number: 3135–0049.
Purpose: Application for benefits.
Frequency of Collection: One-time.
Respondents: Individuals, state or local governments or nonprofit institutions.
Use: Guideline instructions and applications elicit relevant information from individual artists, nonprofit organizations, and state or local arts agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.
Estimated Number of Respondents: 2,347.
Estimated Hours for Respondents to Provide Information: 6,783.

Title: Jazz Study Fellowship Grant Acceptance Agreement and Questionnaire.
OMB Number: 3135–0029.
Purpose: Application for benefits, program evaluation and program management.
Frequency of Collection: Annually.
Respondents: Individuals.
Use: Establishes project period and payment schedule; assists in monitoring grant activity and in evaluating study activities.
Estimated Number of Respondents: 70.
Estimated Hours for Respondents to Provide Information: 43.

Title: Final Descriptive Report Form for State and Regional Arts Agencies.
OMB Number: 3135–0034.
Purpose: Program evaluation, program planning or management.
Frequency of Collection: Annually.
Respondents: State or local governments, non-profit institutions.
Use: Reported information is needed and used for: (1) Monitoring state and regional arts agency program activities; (2) planning for coordination of Endowment programs and activities with those of state and regional arts agencies; and (3) reporting to the Congress and the public on the use of funds awarded to the states and regions.
Estimated Number of Respondents: 63.
Estimated Hours for Respondents to Provide Information: 252.

Murray R. Welsh,
Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 86–15118 Filed 7–2–86; 8:45 am]
BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Availability of Draft Generic Technical Position in High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the "Draft Generic Technical Position on Peer Review for High-Level Nuclear Waste Repositories."

DATE: The comment period expires September 2, 1986.

ADDRESSES: Send comments to John J. Linehan, Acting Chief, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623–SS, Washington, DC 20555. Copies of this document may be obtained free of charge upon written request to Linda Luther, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623–SS, Washington, DC 20555, Telephone 1/800/368–5642, Ext. 74426.

FOR FURTHER INFORMATION CONTACT: James E. Kennedy, Section Leader, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301/427–4786.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982 (Pub. L. 97–425) and the Commission regulation 10 CFR Part 60 provide for interaction between the Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interactions are to fully inform DOE about the level of information that must be provided in a license application to allow a licensing decision to be made by NRC.

The principal mechanism for providing guidance to the DOE is completion by the NRC staff of Site Characterization Analyses (SCA's) submitted according to the Nuclear Waste Policy Act and 10 CFR Part 60. Additional means have been developed to supplement the guidance provided in the SCA's. These include staff technical positions on both generic and site specific issues. Generic Technical Positions (GTP's) establish the staff's position on broad technical issues that would be applicable to any site. Site Technical Positions (STP's) establish the staff's position on a site-specific technical issue. A number of GTP's will be developed by the staff to establish technical positions on generic issues or information requirements for sites being investigated by DOE.

This announcement notices availability and solicits comments on the "Draft Generic Technical Position on Peer Review for High-Level Nuclear Waste Repositories." The purpose of this technical position is to provide guidance on the definition of peer review, the areas where a peer review is appropriate, the qualification of peers, and the conduct and documentation of a peer review.

Dated at Silver Spring, Maryland, this 25th day of June, 1986.

For the Nuclear Regulatory Commission.

John J. Linehan,
Acting Chief, Repository Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 86–15089 Filed 7–2–86; 8:45 am]
BILLING CODE 7590–01–M

Availability of Draft Generic Technical Position in High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the "Draft Generic Technical Position on Qualification of Existing Data for High-Level Nuclear Waste Repositories."

DATE: The comment period expires September 2, 1986.

ADDRESSES: Send comments to John J. Linehan, Acting Chief, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623–SS, Washington, DC 20555. Copies of this document may be obtained free of charge upon written request to Linda Luther, Docket Control Center, Division of Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 623–SS, Washington, DC 20555, Telephone 1/800/368–5642, Ext. 74426.

FOR FURTHER INFORMATION CONTACT: James E. Kennedy, Section Leader, Repository Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301/427–4786.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982 (Pub. L. 97–425) and the Commission regulation 10 CFR Part 60 provide for interaction between the Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interactions are to fully inform DOE about the level of information that must be provided in a license application to allow a licensing decision to be made by NRC.

The principal mechanism for providing guidance to the DOE is completion by the NRC staff of Site Characterization Analyses (SCA's) submitted according to the Nuclear Waste Policy Act and 10 CFR Part 60. Additional means have been developed to supplement the guidance provided in the SCA's. These include staff technical positions on both generic and site specific issues. Generic Technical Positions (GTP's) establish the staff's position on broad technical issues that would be applicable to any site. Site Technical Positions (STP's) establish the staff's position on a site-specific technical issue. A number of GTP's will be developed by the staff to establish technical positions on generic issues or information requirements for sites being investigated by DOE.

This announcement notices availability and solicits comments on the "Draft Generic Technical Positions on Qualification of Existing Data for High-Level Nuclear Waste Repositories." The purpose of this technical position is to provide guidance on a set of conditions which may be used to qualify data not initially collected under 10 CFR Part 60, Subpart G quality assurance program.

Dated at Silver Spring, Maryland, this 25th day of June, 1986.

For the Nuclear Regulatory Commission.

John J. Linehan,

Acting Chief, Repository Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 86–15090 Filed 7–2–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to Connecticut Yankee Atomic Power Company (the licensee), for the Haddam Neck Plant located in Middlesex County, Connecticut.

Environmental Assessment

Identification of Proposed Action

The exemption would grant relief in four fire areas to allow the use of security perimeter lighting and portable hand held lighting for outside access/egress and for the performance of certain outside task for compliance with section III.J of Appendix R. The exemption would include a portion of the general yard area and the immediate vicinity of the primary water storage tank (PWST) for access and egress; manual operation of LD–V–221 located near the vent stack in the immediate vicinity of the primary water storage tank (PWST); and for manual operation of CD-V-632 located near the demineralized water storage tank (DWST).

The exemption is responsive to the licensee's application for exemption dated June 13, 1986.

The Need for the Proposed Action

The proposed exemption is needed because the features described in the licensee's request regarding the existing and proposed fire protection at the plant for these items are the most practical method for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action

The proposed exemption will provide a degree of fire protection such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined, nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission conlcudes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemptions involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternative Use of Resources

This action does not involve use of resources not previously considered in the Final Environmental Statement for the Haddam Neck Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For the details with respect to this action, see the application for the exemption , dated June 13, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Bethesda, Maryland, this 30th day of June, 1986.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Integrated Safety Assessment Project Directorate, Division of PWR Licensing—B.

[FR Doc. 86–15088 Filed 7–2–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50409]

Dairyland Power Cooperative (La Crosse Boiling Water Reactor); Exemption

I

Dairyland Power Cooperative (the licensee) is the holder of Provisional Operating License No. DPR45 which

authorizes operation of the La Crosse Boiling Water Reactor (LACBWR). This license provides, among other things, that it is subject to all rules, regulations and orders of the Commission now or hereafter in effect. The facility is a boiling water reactor rated at 50MW(e) at the licensee's site located in Vernon County, Wisconsin.

II

10 CFR 50.54(w), requires that each commerical power reactor licensee shall, by June 29, 1982, take reasonable steps to obtain on-site property damage insurance available at reasonable cost and on reasonable terms from private sources or to demonstrate to the satisfaction of the Nuclear Regulatory Commission (the Commission) (NRC) that it possesses an equivalent amount of protection covering the facility, provided, among other things, that "this insurance must have a minimum coverage limit no less than the combined total of (i) that offered by either American Nuclear Insurers (ANI) and Mutual Atomic Energy Reinsurance Pool (MAERP) jointly or Nuclear Mutual Limited (NML); plus (ii) that offered by Nuclear Electric Insurance Limited (NEIL), the Edison Electric Institute (EEI), ANI and MAERP jointly, or NML as excess property insurance." On September 12, 1983, the NRC granted the licensee an exemption from the requirement to carry excess property insurance.

The licensee currently is required to carry the full amount of on-site primary property damage insurance coverage (500 million dollars). By letter dated July 26, 1985, the licensee requested an exemption to reduce the amount of primary property damage insurance from the full amount of 500 million to 180 million dollars. The licensee states that the requirement to fully comply with the regulation is an undue financial hardship and burden. Maintaining a lower level of primary property damage insurance will provide annual savings of more than 200,000 dollars which will reduce operating cost for LACBWR. By letters dated February 7, July 12, November 21, December 16, 1985 and February 19, 1986 the licensee provided its technical justification that 180 million dollars of primary property damage insurance provides an adequate level of coverage to return the LACBWR plant to a condition ready for decommissioning following an accident.

In support of this request for exemption, the licensee submitted estimates of the potential property damage to LACBWR and the recovery costs following (1) a design basis loss of coolant accident (LOCA) assuming 100 percent cladding failure without fuel melting, and (2) a second scenario that adds a 50 percent fuel melt criterion. Accident recovery cost estimates are contained in a report titled "Post Accident Recovery Cost Study of the La Crosse Boiling Water Reactor", Document No. 81A1087, Rev. 3 and Rev. 4, prepared by Nuclear Energy Services (NES) of Danbury, Connecticut. The base document (81A1087, Rev. 3) gives an estimate of $152,042,200 in 1984 dollars for accident recovery at LACBWR following a LOCA that results in 100 percent cladding failure without fuel melting. An addendum (81A1087, Rev. 4) gives an estimate of $179,325,150 in 1984 dollars for a second accident scenario that adds a 50 percent fuel melt criterion. The accident scenarios evaluated by the licensee are equivalent to the most severe accident scenarios postulated in NUREG/CR-2601. NUREG/CR-2601 provided the technical bases for primary property damage insurance rule 10 CFR 50.54(w).

III

The staff with technical assistance from Pacific Northwest Laboratory (PNL) has reviewed the information provided by the licensee in support of its request for exemption from the on-site primary property damage insurance requirement of § 50.54(w)(1) of 10 CFR Part 50. The staff's review has addressed the following items:

—Evaluation of the postulated LACBWR accident scenarios
—Evaluation of the postulated accident operations
—Assessment of the estimated costs of accident cleanup.

The LOCA that provides the basis for the LACBWR accident recovery study is the maximum credible accident identified in the LACBWR safety analysis report. LACBWR accident scenarios are equivalent to scenarios 2 and 3 in NUREG/CR-2601, "Technology, Safety and Cost of Decommissioning Reference Light-Water-Reactors Following Postulated Accidents."

The accident recovery operations described in the LACBWR study provide an adequate tabulation of required cleanup tasks in the reactor containment building following a LOCA. Time requirements for accident recovery following the "base case" accident are conservative and consistent with time requirements for BWR accident cleanup specified in NUREG/CR-2601. Staffing requirements for accident recovery are based on the actual LACBWR operating staff augmented by additional personnel needed to perform decontamination and defueling operations. Provision is made for additional personnel to provide the support activities needed during recovery operations. The postulated recovery staff is adequate to perform the recovery operations described in the study for all accident scenarios.

Bases and assumptions used to estimate accident recovery costs are reasonable and consistent with those in NUREG/CR-2601. The cost estimating methodology used is a standard methodology that has been employed with other decommissioning studies. Costs have been included for all of the recovery operations and support services identified in the study. Basic cost data used to develop the cost estimates are realistic and representative of actual labor, material, waste management, and support services costs. The estimate of 152 million dollars and 179 million dollars, including contingency, are conservative estimates of the cost of LACBWR accident recovery following the "base case" accident and the 50 percent fuel melt accident. The staff finds the accidents evaluated by the licensee are sufficient to establish an adequate level of primary property damage insurance coverage as required by 10 CFR 50.54(w).

Damage from the worst possible accident at LACBWR would be a small fraction of a similar accident at most larger and newer plants. LACBWR has a tight containment building and contains less coolant in the primary circuit than most larger BWR units. Due to LACBWR's small size, the reactor contains a low inventory of fissionable material and fission products and yields a much smaller and more confined contamination area to be dealt with in the event of the worst case postulated accident. Moreover, since power output is directly related to the amount of possible damage, it is not reasonable to project that the amount of damage for a 50 MW plant would be the same as a much larger plant. 10 CFR 50.54(w) makes no provisions for the amount of primary property damage insurance coverage required based on the size of a plant and the postulated clean up cost following an accident. Therefore the staff finds compliance with 10 CFR 50.54(w) results in an undue financial burden for the licensee.

IV

The staff has reviewed the licensee's request for exemption and finds that requiring the licensee to carry the full amount of primary property insurance coverage, 500 million dollars, as required by 10 CFR 50.54(w)(1)(i) is an unnecessary financial burden.

Based on its review, the staff concludes that issuance of this exemption will have no significant effect on the safety of the public or the plant. Further, the licensee has shown special circumstances as described above and in the staff's supporting safety evaluation to support the exemption.

Pursuant to 10 CFR 51.31, the Commission has determined that the granting of this exemption will have no significant impact on the environment (December 12, 1985, 50 FR 50877).

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a) an exemption is authorized by law, will not present undue risk to the public health and safety, and is consistent with the common defense and security. As indicated above, compliance with 10 CFR 50.54(w)(1) would result in undue costs for the size of the La Crosse facility that are significantly in excess of the relative cost incurred for similar insurance by the other much larger facilities covered by the rule. Thus, special circumstances as described in § 50.12(a)(2)(iii) exist. Consequently, the exemption falls within special circumstances determined by the Commission to be sufficient to support the exemption. Therefore, the Commission hereby approves the following exemptions:

The licensee is exempt, until further Order of the Commission, from the requirement to carry primary property damage insurance coverage in the full amount called for by 10 CFR 50.54(w)(1)(i), provided that the licensee maintain such primary property damage insurance in an amount not less than $180 million.

Dated at Bethesda, Maryland, this 26 day of June 1986.

For the Nuclear Regulatory Commission.

R. Wayne Houston,

Acting Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 86-15091 Filed 7-2-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-133]

Pacific Gas and Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing Humboldt Bay Power Plant, Unit No. 3

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-7, issued to Pacific Gas and Electric Company (the licensee), for the Humboldt Bay Power Plant, Unit No. 3 (the facility), located in Humboldt County, California. The amendment is in response to the licensee's application and Environmental Report dated July 30, 1984, as revised February 28, March 20, April 3, July 11 and 30, October 7, and December 13, 1985, and March 13 and 14, May 14, 16, and 23, and June 12, 1986, related to decommissioning the facility. Two letters each were dated May 16 and May 23, 1986. The amendment would accomplish the following:

(1) Deletion of license conditions required by the "Order for Modification of License" dated May 21, 1976, as revised by Order dated December 31, 1976. These Orders established requirements in License No. DPR-7 related to seismic investigation, analysis, and modifications that would have to be accomplished prior to a return to power operation following the July 2, 1976 facility shutdown;

(2) Approval of the licensee's Decommissioning Plan, which involves 30 years of on-site storage of residual radioactivity followed by its removal (SAFSTOR). The licensee also proposes to retain spent fuel on-site in the spent fuel storage pool untila Federal repository is available for the spent fuel disposal. An Environmental Report submitted with the Decommissioning Plan analyzes the environmental impacts of the SAFSTOR option. The Decommissioning Plan analyzes the proposed monitoring, maintenance and operation of the spent fuel pool and related systems. The plan and the Environmental Report also analyze potential accidents at the facility and the controls established for radiation protection and the prevention of the release of radioactivity from the site;

(3) Revision of the technical specifications (TS) to reflect the permanent shutdown and possess-but-not-operate status of the facility. Requirements for facility power operation would be deleted such as: TS for the reactor protection system, the reactor core design features and operating limits, the reactor cooling system, the emergency core cooling system, refueling, and the halogen sampling system. Other TS requirements would be revised to reflect the SAFSTOR status, such as: Requirements for radiation monitoring, facility maintenance and spent fuel pool operations; and

(4) Extension of License No. DPR-7 for 15 additional years from November 9, 2000, to November 9, 2015, to be consistent with the licensee's Decommissioning Plan that involves 30 years of on-site storage of residual radioactivity. By Amendment No. 19, dated July 16, 1985, the Commission revised License No. DPR-7 to possess-but-not-operate status in partial response to the licensee's July 30, 1984 application. Amendment No. 19 allows the licensee to possess the facility and the byproduct material that was produced by operation of the reactor but prohibits operation of the reactor. Similarly, the amendment allows possession of the spent fuel but not its use in operations of the reactor.

The NRC staff is preparing a Safety Evaluation and an Environmental Statement with respect to the licensee's proposed Decommissioning Plan. On November 1, 1984, (49 FR 44039) the NRC published a Notice of Availability of Licensee's Environmental Report and Notice of Intent by the NRC to Prepare an Environmental Impact Statement. That notice also stated that a public scoping meeting would be held and that a Draft Environmental Statement would be prepared.

The scoping meeting was held in Eureka, California on December 4, 1984, to allow members of the public to express their views and environmental concerns. Minutes of this scoping meeting are contained in a letter from J.A.Zwolinski, NRC, to J.D. Shiffer, PG&E, dated December 18, 1984. A Draft Environmental Statement was issued on April 23, 1986, with a notice of its availability for comment published in the **Federal Register** on April 28, 1986 (51 FR 15853). A Final Environmental Statement is being prepared by the NRC staff that will consider public comments and comments made by Federal, State and local agencies.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By August 4, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" as set forth in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission, or an Atomic Safety and Licensing Board designated by the Commission, or the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary of the Commission or the

Chairman of the designated Atomic Safety and Licensing Board will issue a Notice of Hearing or an appropriate Order.

As required by 10 CFR Part 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board for up to fifteen (15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the Order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. When petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Mr. Herbert N. Berkow: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555 and to Mr. Phillip A. Crane, Jr., Pacific Gas and Electric Company, Post Office Box 7442, San Francisco, California 94120, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the Application for Amendment and Environmental Report dated July 30, 1984, and the above cited revisions, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and at the Eureka-Humboldt County Library, 421 I Street (County Courthouse), Eureka, California 95501.

Dated at Bethesda, Maryland, this 27th day of June 1986.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director Standardization and Special Projects Directorate Division of PWR Licensing—B, NRR.

[FR Doc. 86–15092 Filed 7–2–86; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Procurement Requests
(2) Form(s) submitted: 1
(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(4) Frequency of use: On occasion
(5) Respondents: Business or other for-profit, Non-profit institutions, Small businesses or organizations
(6) Annual responses: 24
(7) Annual reporting hours: 49
(8) Collection description: The collection obtains the information needed from bidders to award contracts for services or equipment.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202–395–6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 86–15125 Filed 7–2–86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–23371; File No. SR–Amex–86–18]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to the Exchange's Equities Allocations Procedure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 18, 1986, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is filing for Commission approval of a three month extension of the pilot procedure under the Exchange's equities allocations procedures which permits a newly listed company which so desires to select the specialist unit for its stock from a list of seven specialist units selected by the Exchange's Committee on Equities Allocations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In June 1984, the Commission approved on a 12 month pilot basis a "modified" equities allocation procedure proposed by the Exchange in order to increase the involvement of a newly listed company in the selection of the specialist unit in its stock.[1] Under the modified procedure, a newly listed company which so desires may select the specialist unit for its stock from a list of seven specialist units selected by the Exchange's Committee on Equities Allocations ("Allocations Committee"). The Exchange made the modified procedure available to companies listing on the Exchange on or after July 1, 1984 as an alternative to the allocation procedure which permits company participation in the selection process to a limited extent (the "limited participation procedure").[2] In June 1985, the Commission granted a six month extension of the modified procedure and in January and in March 1986, three month extensions, respectively, to permit it to further review the adequacy of the Exchange's procedures under the pilot and to provide the Exchange with the opportunity to continue to assess the pilot's impact prior to requesting permanent approval.[3] In April 1986, the Exchange requested the Commission's permanent approval of the modified procedure.[4]

At the Commission's request, the Exchange has compiled information regarding its experience under the pilot to provide the Commission with a comprehensive review of the operation of the pilot to date. To avoid interruption of the pilot program, which is scheduled to terminate at the end of June, the Exchange is requesting a three month extension to permit the Commission sufficient time to review the materials submitted and consider the Exchange's request for permanency.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that the proposed procedure is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change also furthers the purposes of section 11A(a)(1)(C)(ii) in that it will stimulate fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition.

The proposed rule change will impose no burden on competition. Rather, the proposed rule change, by rewarding superior performance, will enhance competition among Exchange specialists, and, by improving the ability of the Exchange to attract prospect companies which desire greater participation in the specialist selection process, will enhance competition among markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The American Stock Exchange, Inc. requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act to enable it to continue its pilot program without interruption.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in order to allow the Exchange to continue its pilot without interruption while the Commission considers the Exchange's request for permanency.

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 submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 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 submissions should refer to the file number in the caption above and should be submitted by July 24, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

[1] *See* Securities Exchange Act of 1934 Release No. 34-21062 (June 18, 1984).

[2] Under the limited participation procedure, the Allocations Committee submits a list of ten eligible specialist units to the company, which has the right to eliminate three units from further consideration. The Allocations Committee then reconvenes to make its final selection from the remaining seven units.

[3] *See* Securities Exchange Act of 1934 Release No. 34-22185 (June 28, 1985), Securities and Exchange Act of 1934 Release No. 34-22780 (January 8, 1986) and Securities and Exchange Act of 1934 Release No. 34-23000 (March 12, 1986).

[4] *See* File No. SR-Amex-86-10.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 26, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-15109 Filed 7-2-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

June 27, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Big Three Industries, Inc.
Capital Stock, $2.50 Par Value (File No. 7-9037)

The Cannon Group, Inc.
Common Stock, $0.01 Par Value (File No. 7-9038)

Consolidated Freightways, Inc.
Common Stock, $0.625 Par Value (File No. 7-9039)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 18, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-15110 Filed 7-2-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-15567]

Application and Opportuntiy for Hearing; Beatrice Companies, Inc.

June 26, 1986.

Notice is hereby given that Beatrice Companies, Inc. (the "Applicant"), has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of LaSalle National Bank ("LaSalle") under two existing indentures of which the Applicant is an obligor, one of which is qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify LaSalle from acting as trustee under the relevant indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Applicant alleges that:

(1) LaSalle is trustee under an indenture (the "BCI Holdings Indenture") between BCI Holdings Corporation and LaSalle, dated as of April 15, 1985, relating to Fifteen Year Floating Rate Junior Subordinated Debentures (the "Debentures") of BCI Holdings Corporation ("BCI Holdings"). The BCI Holdings Indenture has been qualified under the Act. Pursuant to a supplemental indenture dated April 17, 1986, the Applicant assumed the guarantee (the "Guarantee") of BCI Merger Corporation pursuant to which BCI Merger Corporation guaranteed the obligations of BCI Holdings Indenture and the Debentures. The Applicant is a wholly-owned subsidiary of BCI Holdings. The Guarantee is unsecured and is subordinated only to Applicant's guarantees of certain other debt obligations of BCI Holdings. There is currently $150 million of Debentures outstanding.

(2) LaSalle also acts as trustee under the indenture (the "IDB Indenture") between the Village of Park Forest South (the "Village") and LaSalle, dated as of January 1, 1977. The IDB Indenture is not qualified under the Act. Under the IDB Indenture, the Village issued bonds on the amount of $1.1 million (the "IDB Bonds") to finance a project for Applicant. At the same time, Applicant entered into a financing agreement with the Village pursuant to which Applicant agreed to deposit funds with LaSalle, as trustee, sufficient to pay the interest and principal when due on the IDB Bonds. Applicant issued a promissory note to the Village evidencing this obligaiton. As security for the IDB Bonds, the Village assigned its rights under the financing agreement and the promissory note to LaSalle, as trustee. The IDB Bonds have no other security. Neither the financing agreement nor the promissory note are secured. Also, neither the financing agreement nor the promissory note are subordinated to any other obligation of Applicant, including the Guarantee. There is currently $850,000 outstanding under the IDB Indenture.

(3) The obligations of Applicant under the Guarantee and the IDB Indenture are wholly unsecured and rank *pari passu*. Any differences that exist between the provisions of the IDB Indenture and the Guarantee are unlikely to cause any conflict of interest for LaSalle as trustee under the BCI Holdings Indenture and the IDB Indenture.

(4) The Applicant is not in default under either of the Guarantee or the IDB Indenture.

(5) In the opinion of the Applicant, the provisions of the aforementioned indentures are not so likely to involve a material conflict of interest so as to make it necessary in the public interest or for the protection of any holder of any IDB Bonds or Debentures to disqualify LaSalle from acting as trustee under the BCI Holdings Indentures.

The Applicant has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document, File No. 22-15567, on file in the offices of the Commission at the Public Reference Section, 450 5th Street, NW., Washington DC 20549.

Notice is further given that any interested person may, not later than July 16, 1986, request, in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed:

Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-15111 Filed 7-2-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24135]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); the Connecticut Light and Power Co. et al.

June 26, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 21, 1986 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit, or in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Connecticut Light and Power Company (70-7137)

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, an electric and gas subsidiary of Northeast Utilities, a registered holding company, has filed a post-effective amendment to the application previously filed pursuant to sections 6(b) and 9(c) of the Act and Rules 40 and 50 thereunder.

By order dated October 2, 1985 (HCAR No. 23852), CL&P was authorized to issue and sell up to $150 million principal amount of its first and refunding mortgage bonds ("Bonds"), in one or more series, no later than December 31, 1986.

CL&P now proposes to modify the terms of the common stock dividend restriction in the indenture that will apply to the issue and sale of the remaining $100 million principal amount of the Bonds authorized to be sold. CL&P proposes (i) to use September 30, 1985, rather that the date of issuance of the series of the Bonds, as the starting date for accumulation of earned surplus, and as the starting date for accrual of preferred dividends to be deducted in the determination of unrestricted earned surplus, and (ii) to use $197,000,000 as the annual dividends allowance. These are the terms of the dividend restriction that apply to CL&P as that result of the sale of CL&P Series KK Bonds.

CL&P is currently engaged in proceedings before the Connecticut Department of Public Utility Control (DPUC) and the Federal Energy Regulatory Commission (FERC), in which the appropriate ratemaking treatment of CL&P's investment in the Millstone 3 nuclear power plant is at issue. It is possible that DPUC or FERC, or both, may impose disallowances that could preclude CL&P from recovering a portion of its investment and related carrying charges in Millstone 3. Further, recent changes proposed by the Financial Accounting Standards Board could require CL&P to write off potentially significant amounts, as a result of actions imposed by DPUC or FERC, or both. By its request, CL&P seeks to avoid the imposition of such additional restrictions.

In order to expand the list of outstanding CL&P bonds to be refunded with the proceeds from the sale of the Bonds, CL&P also proposes to add two series of bonds to those previously authorized to be refunded by the order of October 2, 1985. The company is not requesting an increase in the amount of such bonds to be refunded. CL&P anticipates that any series of bonds not redeemed under the current application will be the subject of a subsequent application.

Columbia Gas System, Inc. (70-7199)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchain Road, Wilmington, Delaware 19807, a registered holding company, has filed declaration with this Commission pursuant to sections 6(a) and 7 of the Act and Rule 50 and 50(a)(5) thereunder.

Columbia proposes to issue and sell within two years of the effective date of this filing in one or more transactions, up to (i) $450 million principal amount of debentures maturing in thirty or fewer years ("Debentures"), (ii) 3 million shares of its common stock ("Common Stock"), $10 par value, or (iii) some combination of Debentures and Common Stock aggregating no more than $450 million in gross offering proceeds. Columbia may negotiate its initial Debenture offering pursuant to an exception from the competitive bidding requirements of Rule 50, as requested. Exceptions from competitive bidding for subsequent Debenture offerings will be requested and considered on a case-by-case basis.

The proceeds will be added to the general corporate funds and will be used to finance, in part, the 1986 and 1987 capital expenditures of Columbia's subsidiary companies, and the 1986 and 1987 installments due certain Southwest producers as a result of renegotiation of contracts with Columbia Gas Transmission Corporation, a subsidiary of Columbia. Columbia also proposes to use a portion of the proceeds received from the sale of Debentures to refund the principal amount of certain high cost debenture issues. Internally generated cash will be used to fund the required redemption premiums.

New England Electric System (70-7215)

New England Electric System ("NEES"), a registered holding company, and its wholly owned subsidiary, New England Power Company ("NEP"), 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration with this Commission pursuant to sections 6, 7, 9, 10, 12(b), 12(c) and 12(f) of the Act and Rules 42 and 43 thereunder.

NEES proposes to acquire up to 300 authorized shares of common stock of the New England Hydro-Transmission Corporation, a New Hampshire corporation ("NEH-NH"), and 1500 authorized shares of common stock of the New England Hydro-Transmission Electric Company, Inc., a Massachusetts corporation, ("NEH-MA"). These two new subsidiaries are to be acquired initially by NEES as wholly owned subsidiaries, and formed in connection with implementation of Phase II of the interconnection between New England Utilities and Hydro-Quebec. Authority is further sought for the new subsidiaries to make short-term borrowings from

banks or from NEES of up to $3.5 million each for the purpose of covering organizational and start-up costs, including preliminary design work licensing and permit costs and limited engineering for Phase II facilities.

In addition, NEP proposes to lease certain of its rights of way to the new subsidiaries in connection with construction of Phase II of the interconnection.

American Electric Power Company, Inc. (70–7224)

American Electric Power Company, Inc. ("American"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed an application pursuant to sections 9 and 10 of the Act.

American proposes to acquire 80,000 shares of the common stock ($.10 par value) of Integrated Communication Systems, Inc. ("ICS") at $25 a share for a total cash consideration of $2,000,000. ICS was formed to develop and market an advanced two-way communications system operating through local telephone networks ("TranstexT"). One of various services which TranstexT can provide, when developed, is advanced energy management services for consumers and small business. American anticipates that this feature of TranstexT will enable it to shape and control electric load so as to defer the construction of costly new generation and transmission facilities.

As a result of the proposed transaction, American will hold 14.9% of ICS common stock. ICS will thus become a subsidiary of American within the meaning of section 2(a)(8)(A) of the Act. ICS expects to issue and sell securities from time to time to finance its operations. As a non-utility subsidiary of American, ICS intends to seek, by supplemental order, an exemption of such issuances and sales from the requirements of section 7 of the Act pursuant to sections 6(b).

Connecticut Light & Power Company (70–7268)

Connecticut Light & Power Company ("CL&P"), Seldon Street, Berlin, Connecticut 06037, a subsidiary of Northeast Utilities, a registered holding company, has filed an application-declaration pursuant to sections 6(b) and 12(c) of the Act and Rules 42(b)(5) and 50 thereunder.

CP&L proposes to issue and sell up to $250 million principal amount of its first and refunding mortgage bonds ("Bonds"), in one or more series, prior to June 30, 1987. The Bonds will mature in not less than two or more than 30 years, and the interest rate and the price of not less than 98% nor more than 100% of principal amount will be determined by competitive bidding.

Additionally, CL&P requests authority to change the method for determining the indenture restriction on the amount available for payment of common stock dividends, or for common stock purchases or reacquisitions, by using the date of September 30, 1985 (rather than the date of issuance of the most recent series of bonds) as the starting date for the accumulation of earned surplus available for common stock distributions, purchases and reacquisitions. This restriction will apply to all Bonds sold prior to June 30, 1987.

National Fuel Gas Company, et al. (70–7280)

National Fuel Gas Company ("National"), a registered holding company, and its wholly owned subsidiaries, National Fuel Gas Distribution Corporation, ("Distribution"), Penn-York Energy Corporation ("Penn-York"), and National Fuel Gas Supply Corporation ("Supply"), 10 Lafayette Square, Buffalo, New York 14203, have filed an application-declaration subject to sections 6, 7, 9, 10 and 12 of the Act and Rules 42, 45 and 50 thereunder.

National proposes to issue and sell one or more series of its debentures ("New Debentures") up to an aggregate principal amount of $250 million. National proposes to issue the New Debentures by July 31, 1988 but may seek an extension of its authority to December 31, 1988 by post-effective amendment. The price, annual interest rate and other terms of each series of the New Debentures will be determined at the time of sale.

Up to $100 million of the $250 amount of the New Debentures will represent new financing. The balance will be used to redeem or otherwise acquire outstanding debentures and preferred stock of National. National may offer to purchase its 12⅞% Debentures due December 1, 1998 and its 11¾% Debentures, due December 1, 1988 (collectively, "Debentures") through tender offers for cash. The prices at which tender offers would be made would be determined shortly before the tender offer commences. National proposes to retain a Dealer-Manager to act as its agent for any tender offer. The Dealer-Manager's fee is expected to be between $2.50 and $3.00 per $1000 principal amount of Debentures tendered. The Company will be required to indemnify the Dealer-Manager for certain liabilities.

National also proposes to make long-term loans in principal amounts up to $125 million to Distribution, $75 million to Penn-York and $125 million to Supply. The aggregate principal amount of such loans will not exceed $250 million. The loans will be evidenced by promissory notes maturing serially on the date of any related sinking fund obligation for the New Debentures, or on the maturity of the New Debentures, provided that National will have the option to require payment of such notes at any time to the extent that the New Debentures are redeemed or otherwise reacquired by National.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86–15114 Filed 7–2–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15169; 811–3137]

Application and Opportunity for Hearing; John Hancock Variable Life Money Market Account

June 26, 1986.

Notice is hereby given that John Hancock Variable Life Money Market Account (the "Applicant"), John Hancock Place, P.O. Box 111, boston, MA 02117, registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 (the "Act"), filed an application on Form N–8f on May 15, 1986, pursuant to Section 8(f) of the Act, for an order declaring tht Applicant has ceased to be an investment company. 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.

The application states that on January 29, 1981, Applicant, a separate account of John Hancock Variable Life Insurance Company ("JHVLICO"), a filed notification of registration on Form N–8A and a registration statement on Form N–1. The application states that the registration statement was declared effective on April 27, 1981, and the initial public offering commenced on the same day or shortly thereafter. Applicant states that on March 28, 1986, all of Applicant's assets were transferred in a reorganization to a corrresponding series of another investment company, John Hancock Variable Series Fund I, Inc. (the "Fund"). According to Applicant, the purpose of the transfer was to reorganize

JHVLICO's three separate accounts, of which Applicant was one, into a single unit investment trust issuing variable life insurance contracts funded by a single underlying management investment company, the "Fund." Applicant further states that the interests in Applicant's shareholders in Fund shares were the same as their interests before the transfer.

Applicant states that it has retained no assets; it has no debts or other liabilities outstanding; and it is not a party to any litigation or adinistrative proceeding. Applicant states that it has no securityholders and is not now engaged, nor does it propose to engage, in any business activities. Applicant states that on March 27, 1986, the day preceding the transfer, it had issued and outstanding 3,797,464 shares of its securities and total assets of $37,974,640.

Applicant states that, on September 10, 1985, its board of managers approved an Agreement and Plan of Reorganization, dated November 27, 1985, providing for the transfer of all of Applicant's assets and related liabilities to the Fund in exchange for Fund shares and for the recording of such shares proportionately on the individual account records of Applicant's shareholders. Applicant further states that its shareholders approved the Agreement on February 12, 1986.

Applicant states that proxy materials regarding the proposed reorganization were distributed to its shareholders and filed with the Commission. Applicant also states that it was granted an order of the Commission on January 27, 1986, pursuant to section 17(b) of the Act to permit the reorganization.

Applicant represents that all expenses in connection with the reorganization were paid by JHVLICO.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 21, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicant at the address stated above. Proof of such 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. 86-15112 Filed 7-2-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15170; 811-3069]

Application and Opportunity for Hearing; John Hancock Variable Life Stock Account

June 26, 1986.

Notice is hereby given that John Hancock Variable Life Stock Account (the "Applicant"), John Hancock Place, P.O. Box 111, Boston, MA 02117, registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 (the "Act"), filed an application on Form N-8f on May 15, 1986, pursuant to section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company. 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.

The application states that on June 9, 1980, Applicant, a separate account of John Hancock Variable Life Insurance Company ("JHVLICO"), filed a notification of registration on Form N-8A and a registration statement on Form N-1. The application states that the registration statement was declared effective on September 10, 1980, and the initial public offering commenced on the same day or shortly thereafter. Applicant states that on March 28, 1986, all of Applicant's assets were transferred in a reorganization to a corresponding series of another investment company, John Hancock Variable Series Fund I, Inc. (the "Fund"). According to Applicant, the purpose of the transfer was to reorganize JHVLICO's three separate accounts of which Applicant was one, into a single unit investment trust issuing variable life insurance contracts funded by a single underlying managment investment company, the "Fund." Applicant further states that the interests in Applicant's shareholders in Fund shares were the same as their interests before the transfer.

Applicant states that it has retained no assets; it has no debts or other liabilities outstanding; and it is not a party to any litigation or administrative proceeding. Applicant states that it has no securityholders and is not now engaged, nor does it propose to engage, in any business activities. Applicant states that on March 27, 1986, the day preceding the transfer, it had issued and outstanding 10,254,925 shares of its securities and total assets of $102,549,250.

Applicant states that, on September 10, 1985, its board of managers approved an Agreement and Plan of Reorganization, dated November 27, 1985, providing for the transfer of all of Applicant's assets and related liabilities to the Fund in exchange for Fund shares and for the recording of such shares proportionately on the individual account records of Applicant's shareholders. Applicant further states that its shareholders approved the Agreements on February 12, 1986.

Applicant states that proxy materials regarding the proposed reorganization were distributed to its shareholders and filed with the Commission. Applicant also states that it was granted an order of the Commission on January 27, 1986, pursuant to section 17(b) of the Act to permit the reorganization. Applicant represents that all expenses in connection with the reorganization were paid by JHVLICO.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 21, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the rquest. 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. 86-15113 Filed 7-2-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15172; File No. 812-6251]

Security Mortgage Acceptance Corporation-1

June 26, 1986.

Notice is hereby given that Security Mortgage Acceptance Corporation-1

("Applicant"), 1385 National City Center, Cleveland, Ohio 44134, filed an application on November 20, 1985, and amendments thereto on April 8, May 6, May 16, and June 18, 1986, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. The application also seeks to extend exemptive relief to future corporations originally sponsored and wholly-owned by the same individual and which are organized for the same limited purposes as Applicant. The application further states that all such future corporations sponsored by the same individual, Alfred Lerner, will engage in substantially similar activities, and will consent to comply with all of the representations and conditions set forth herein. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein and to the Act and rules thereunder for the text of all applicable provisions.

Applicant is a newly-formed Ohio corporation, wholly-owned by Alfred Lerner. Applicant has been formed, and each future corporation will be formed, for the purpose of issuing bonds ("Bonds"), collateralized by mortgages that are first liens on one-to-four family residences ("Mortgages") and/or mortgage-backed securities evidencing an undivided interest in pools of mortgages that are first liens on one-to-four family residences ("Private Mortgage Certificates"), mortgage pass-through certificates fully guaranteed as to principal and interest by the Government National Mortgage Association ("GNMA Certificates"), mortgage participation certificates issued and guaranteed by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates") and guaranteed mortgage pass-through certificates issued and guaranteed by the Federal National Mortgage Association ("FNMA Certificates") (GNMA Certificates, FHLMC Certificates and FNMA Certificates severally referred to with Private Mortgage Certificates, as "Mortgage Certificates", and collectively with Mortgages, as the "Mortgage Collateral").

It is contemplated that Applicant's Bonds and the Bonds of future corporations, will be issued in several series. Each series of Bonds will be secured separately by Mortgage Collateral and will be issued pursuant to an indenture between Applicant and an independent trustee ("Trustee"), as supplemented by a supplemental indenture for each such series ("Indentures"). Each series of Bonds will be registered under the Securities Act of 1933 ("Securities Act"), unless an appropriate exemption from such registration is available, and sold pursuant to a prospectus or private placement memorandum. Indentures for each public offering will be qualified under the provisions of the Trust Indenture Act of 1939.

Applicant states that the Bonds and the Bonds of future corporations will be structured so that the cash flow generated by the Mortgage Collateral, together with the other collateral pledged to secure the Bonds, will be sufficient to provide for full and timely payment of principal and interest on all the Bonds. The other collateral pledged to secure all the Bonds may include a separate collection account for each series of Bonds and may include a debt service reserve fund or other reserve fund, and payments made under any minimum principal payment agreement. If principal payments on the Bonds are made other than on a monthly basis, the Bonds may provide for mandatory redemptions to the extent that principal payments on the Mortgage Collateral cannot be invested at a rate which will provide sufficient income to pay interest on the Bonds. Applicant contends that none of these redemption procedures would make any of the Bonds a "redeemable security" for purposes of section 2(a)(32) of the Act. Under no circumstances will Bondholders be entitled to compel liquidation of the Mortgage Collateral in order to redeem the Bonds prior to maturity.

Each pool of Mortgage Collateral securing a series of Bonds will be fixed at the time of issuance of such Bonds, subject to the limited rights of substitution set forth in condition 3 below, and that pool will not be subject to investment discretion exercisable by any party. For so long as the Bonds of a series are outstanding, the Indenture will restrict Applicant from selling, transferring, substituting (except as noted) or otherwise disposing of any of the Mortgage Collateral (except at a price at least equal to the collateral value of such Mortgage Collateral, pursuant to a minimum principal payment agreement) and from incurring, assuming or guaranteeing any indebtedness secured by any of the Mortgage Collateral pledged to secure such series. If Applicant engages in any of the foregoing transactions, the Mortage Collateral held by the Trustee or independent custodian will continue to be sufficient to cover the payments on the outstanding Bonds.

Pursuant to the Indenture, the proceeds of the Mortgage Collateral held by the Trustee pending distribution to Bondholders may be invested only in United States obligations, cash equivalents and other enumerated short-term securities meeting requirements of the rating agency or agencies rating the Bonds of a series. The Trustee will have a perfected first lien security interest in all such Mortgage Collateral. In addition, the Indenture provides that an investment may not be made in any particular obligation unless such obligation matures on or before the date on which the funds invested are required or may be anticipated to be required to be applied for the benefit of Bondholders in accordance with the Indenture.

Applicant submits that (1) its acquisition of the Mortgage Collateral and issuance of Bonds are not the types of activities intended to be regulated by the Act, (2) the safeguards afforded to purchasers of the Bonds fully protect investors, and (3) its activities will promote the public interest by expanding the market for mortgage securities, thereby increasing the pool of funds available for mortgage loans and increasing the capacity of mortgage lenders to meet the housing finance needs of the nation. In addition, Applicant has consented to the imposition of seven conditions, set forth below, as specific conditions to granting the requested order:

1. Each series of Bonds will be registered under the Securities Act, unless offered in a transaction exempt from registration pursuant to Section 4(2) of the Securities Act.

2. The Bonds will be "mortgage related securities" within the meaning of Section 3(a)(41) of the Securities Exchange Act of 1934. However, the Mortgage Collateral underlying the Bonds (whether owned by Applicant or pledged pursuant to collateralized obligations) will be limited to: (i) Mortgages that are first liens on single (one-to-four) family residences; (ii) mortgage certificates evidencing an undivided interest in pools of mortgages that are first liens on single (one-to-four) family residences ("Private Mortgage Certificates"); and (iii) mortgage certificates guaranteed by GNMA, FNMA or FHLMC ("Federal Mortgage Certificates") (collectively, "Mortgage Collateral" as hereinabove defined).

3. If new Mortgage Collateral is substituted, the substitute collateral must: (i) be of equal or better quality than the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced, (iii) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (iv) meet the conditions set forth in paragraphs 2, 4, and 6. In addition, new collateral may not be substituted for more than 20% of the aggregate face amount of the Mortgages initially pledged as

Mortgage Collateral or for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as Mortgage Collateral. New Mortgages may be substituted for Mortgages initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the Mortgage Collateral being replaced. New Private Mortgage Certificates may be substituted for Private Mortgage Certificates initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the Mortgage Collateral being replaced. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral. (New collateralized obligations may be substituted for collateral obligations initially pledged only if the substitution of Mortgage Collateral underlying those instruments would be permitted under this condition.)

4. All mortgages, mortgage certificates, funds, accounts or other collateral securing a series of Bonds ("Bond Collateral") will be held by the Trustee or on behalf of the Trustee by an independent custodian. The custodian may not be an affiliate (as the term "affiliate" is defined in Securities Act Rule 405 17 CFR 230.405) of the Applicant, or of the master servicer or originating lender of any Mortgagegs that are pledged as Mortgae Collateral. If there is no master servicer, no servicer of those Mortgages may be an affiliate of the custodian. The Trustee will be provided with a first priority perfected security or lien interest in and to all Bond Collateral.

5. Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds will not be considered redeemable securities within the meaning of Section 2(a)(32) of the Act.

6. The master servicer of any Mortgages (including Mortgages underlying Private Certificates) that are pledged as Mortgage Collateral may not be an affiliate of the Trustee. If there is no master servicer, no servicer of those mortgages may be an affiliate of the Trustee. Any master servicer and servicer of such Mortgages will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing the servicing of such Mortgages shall obligate the servicer to provide substantially the same services with respect to those Mortgages as it is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by VA or eligible for purchase by FNMA or FHLMC.

7. No less often than annually, an independent public accountant will audit the books and records of the Applicant and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Trustee.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 21, 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 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 86-15115 Filed 7-2-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Interest Rates; Quarterly Determinations

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is eight and one-half (8½) percent for the fiscal quarter beginning July 1, 1986.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8-4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the July-September quarter of 1986, this rate will be seven and one-half (7½) percent.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 86-14766 Filed 7-2-86; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 01/01-0338]

Wallace Capital Corp; Application for a Small Business Investment Company License

An application for a license to operate a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, *et seq.*), has been filed by Wallace Capital Corporation, (Applicant), 170 Westminster Street, Suite 300, Providence, Rhode Island 02903, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1986).

The officers, directors and sole shareholder of the Applicant are as follows:

Name and Title

Lloyd W. Granoff, 460 Rochambeau Avenue, Providence, RI 02906, President, Treasurer, Director

Leonard Granoff, 460 Rochambeau Avenue, Providence, RI 02906, Director

Richard J. Bornstein, 12 Barbour Drive, Providence, RI 02906, Director

Frances C. Mascola, 75 River Street, Bristol, RI 02809, Secretary

The Koffler Corporation, 170 Westminster Street, Providence, RI 02903, Sole Shareholder.

There are six (6) owners of 10 percent or more of the entity securities by class of The Koffler Corporation. The owners are Sol Koffler and Lillian Koffler, 2100 South Ocean Boulevard, Apt. 105 South, Palm Beach, FL 33480, and four trust agreements whose trustees in the various agreements include Leonard Granoff, Richard J. Bornstein, Fleet National Bank, 111 Westminister Street, Providence, RI 02903 and Quinlan J. Shea, 134 Ferry Lane, Barrington, RI 02806.

The Applicant, a Rhode Island Corporation, will begin operations with $1,015,000 paid in capital and paid in surplus. The Applicant will conduct its activities primarily in the State of Rhode Island but will consider investments in business in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Providence, RI.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 24, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-14779 Filed 7-2-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 972; Delegation of Authority No. 160]

Assistant Secretary for Oceans and International Environmental and Scientific Affairs

By virtue of the authority vested in me by section 4 of the Act of May 26, 1949 (63 Stat. 111; 22 U.S.C. 2658), as amended, I hereby delegate to the Assistant Secretary for Oceans and International Environmental and Scientific Affairs the following:

(a) 1. The functions vested in the Secretary of State by the following sections of the Magnuson Fishery Convervation and Management Act, 16 U.S.C. 1801 *et seq.* (MFCMA):

MFCMA Section 3(4), 16 U.S.C. 1802(4);
MFCMA Section 201(e)(1), 16 U.S.C. 1821(e)(1);
MFCMA Section 201(e)(2), 16 U.S.C. 1821(e)(2);
MFCMA Section 201(g), 16 U.S.C. 1821(g);
MFCMA Section 205(a), 16 U.S.C. 1825;
MFCMA Section 205(b)(2), 16 U.S.C. 1825(b)(2);
MFCMA Section 205(c), 16 U.S.C. 1825(c);
MFCMA Section 302(c)(1)(D), 16 U.S.C. 1852(c)(1)(D);
MFCMA Section 302(f)(5), 16 U.S.C. 1852(f)(5);

2. The functions vested in the Secretary of State under section 7 of the Antarctic Conservation Act, Pub. L. 95-541, 16 U.S.C. 2406;

3. The functions vested in the Secretary of State in the following sections of the Antarctic Marine Living Resources Convention Act, Pub. L. 98-623, 16 U.S.C. 2431 *et seq.* section 304; 16 U.S.C. 2431; section 305(a), (b), and (d), 16 U.S.C. 2433, 2434(a), (b), and (c);

4. The functions vested in the Secretary of State under section 7(i) of the Endangered Species Act, Pub. L. 95-632, 16 U.S.C. 1536(i);

5. The functions vested in the Secretary of State under the following provisions of the Atlantic Tuna Convention Act: sections 971c(a), 971d(a) (c)(4) and (c)(5) and 971g(a);

6. The functions vested in the Secretary of State under the following provisions of the North Pacific Fur Seal Act: 16 U.S.C. 1156(b) and 1158;

7. The functions vested in the Secretary of State under the following provisions of the Eastern Pacific Tuna Licensing Act: 16 U.S.C. 972a, and 972b, and 972c(a);

8. The functions vested in the Secretary of State under section 10 of the Great Lakes Fishery Act, 16 U.S.C. 939;

9. The functions vested in the Secretary of State under the following sections of the Atlantic Salmon Convention Act: 16 U.S.C. 3602(b), 3603 and 3604(b);

10. The functions vested in the Secretary of State with respect to the American-Spanish Fisheries Board established under Annex II to the Agreement Between the Government of the United States of America and the Government of Spain Concerning Fisheries off the Coasts of the United States (TIAS 8523);

11. The functions vested in the Secretary of State under the Ocean Thermal Energy Conservation Act, 42 U.S.C. 9111(13);

12. The functions vested in the Secretary of State under the following sections of the North Pacific Fisheries Act: 16 U.S.C. 1025 and 1033(b).

(b) The Assistant Secretary for Oceans and International Environmental and Scientific Affairs may redelegate to officers and employees under his direction and supervision any of the functions delegated to him under subsection (a) above, except those required by law to be approved by higher authority.

Dated: June 21, 1986.

John C. Whitehead,

Acting Secretary of State.

[FR Doc. 86-15007 Filed 7-2-86; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice 971]

Certification to Authorize Military Assistance and Sales for Guatemala

Pursuant to section 703(a) of the International Security and Development Cooperation Act of 1985 (Pub. L. 99-83), Title III of the Foreign Assistance and Related Programs Appropriations Act, 1986 (Pub. L. 99-190), and the authority vested in me by Executive Order 12163, as amended, I hereby certify that:

(1) An elected civilian government is in power in Guatemala and has submitted a formal written request to the United States for the assistance, sales, or financing to be provided.

(2) The Government of Guatemala made demonstrated progress during the preceding year—

(A) In achieving control over its military and security forces,

(B) Toward eliminating kidnappings and disappearances, forced recruitment into the civil defense patrols, and other abuses by such forces of internationally recognized human rights, and

(C) In respecting the internationally recognized human rights of its indigenous Indian population.

This certification shall be reported to the Congress immediately and shall be published in the **Federal Register.**

Dated: June 6, 1986.

George P. Shultz,

Secretary of State.

[FR Doc. 86-15013 Filed 7-2-86; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice 970]

Certain Foreign Passports Validity

Grenada and Saint Christopher and Nevis are added to the list of countries which have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign issuing authority for a period of at least six months beyond the expiration date specified in the passport. This notice amends Public Notice 954 of February 26, 1986 (51 FR 6853).

Dated: June 18, 1986.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 86-15014 Filed 7-2-86; 8:45 am]

BILLING CODE 4710-06-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 128
Thursday, July 3, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL ELECTION COMMISSION

DATE AND TIME: Wednesday, July 9, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, section 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, July 10, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Draft AO 1986-19—Robert F. Bauer
Notice of Proposed rulemaking 11 CFR 110.3, 110.4, 110.5 and 110.6
Draft Revisions: 11 CFR 110.1 and 110.2
Routine administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 86-15196 Filed 7-1-86; 3:17 pm]
BILLING CODE 6715-01-M

2

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission will hold an open teleconference meeting at 3:00 p.m. on Friday, July 11, 1986.

PLACE: Teleconference facilities will be located at General Services Administration, 18th and F Streets, NW, Room 3210, Washington, DC.

STATUS: The meeting will be open to public observation. Public participation will not be allowed.

MATTERS FOR DISCUSSION: Review of Commissioners' areas of emphasis; Commission budget for FY 1987; status of the tuna/porpoise issue; scheduling and agenda for the next meeting of the Commission and Committee of Scientific Advisors; report on March 26-28 marine mammal/fisheries interactions workshop and follow-up actions; formation and status of Commission working groups; Hawaiian monk seal critical habitat designation recommendation; permit applications PRT-672624 (Brownell); PRT-708155 (DeGange); PRT-708659 (Kanazawa Aquarium); PRT-708664 (Nagasaki Biopark); PRT-708661 (Kamogawa Sea World); PRT-708653 (Okhotsk Aquarium Foundation); PRT-708646 (Shimoda Floating Aquarium); PRT-708641 (Minamichita Beachland Aquarium).

FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 I Street, NW., Washington, DC 20006, 202/653-6237.

Dated: July 1, 1986.

John R. Twiss, Jr.,
Executive Director.

[FR Doc. 86-15198 Filed 7-1-86; 3:38 pm]
BILLING CODE 6820-31-M

3

POSTAL SERVICE BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 23181, June 25, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE: 8:30 a.m., Tuesday, July 8, 1986.

CHANGES IN THE MEETING: Addition of the following agenda item:

"3. Board Administrative Matters.

CONTACT PERSON FOR MORE INFORMATION: Mr. David F. Harris, Secretary of the Board, (202) 268-4800.

David F. Harris,
Secretary.

Paul J. Kemp,
Alternate Liaison Officer for the U.S. Postal Service.

[FR Doc. 86-15132 Filed 7-1-86; 10:04 am]
BILLING CODE 7710-12-M

federal register

Thursday
July 3, 1986

Part II

Environmental Protection Agency

Toxic and Hazardous Substances Control; Premanufacture Notices; Monthly Status Report for February 1986

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53083; FRL-3029-9]

Toxic and Hazardous Substances Control; Premanufacture Notices; Monthly Status Report for February 1986

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly summary. This is the report for February 1986.

Nonconfidential portions of the PMNs may be seen in Rm. E-107 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53082]" and the specific PMN number, should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E-201, 401 M Street SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-613, 401 M Street SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during February; (b) PMNs received previously and still under review at the end of February; (c) PMNs for which the notice review period has ended during February; (d) chemical substances for which EPA has received a notice of commencement to manufacture during February and (e) PMNs for which the review period has been suspended. Therefore, the February 1986 PMN Status Report is being published.

Dated: June 3, 1986.

Denise Devoe,

Acting Director, Information Management Division.

Premanufacture Notices Monthly Status Report February 1986

I. 145 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH

PMN No.	Identity/generic name	FR citation	Expiration date
P 86-468	Generic name: Microgel non-aqueous disperson	51 FR 5592 (2-14-86)	May 3, 1986.
P 86-469	2-naphthalenecarboxamide, N-(4-chloro-2-methoxy-5-methylphenyl)-3-hydroxy-, mono-sodium salt	51 FR 5592 (2-14-86)	Do.
P 86-470	2-naphthalenecarboxamide, N-(4-chloro-2,5-dimethoxyphenyl)-3-hydroxy-7-methoxy-, potassium salt	51 FR 5592 (2-14-86)	Do.
P 86-471	2-hydroxy-N-(4-methoxy-2-methylphenyl)-11-H-benzo[a]-carbazole-3-carboxamide	51 FR 5592 (5592) (2-14-86)	Do.
P 86-472	Generic name: Copolyamide from dibasic acid, diamine and C_{12}-lactam	51 FR 5592 (5593) (2-14-86)	Do.
P 86-473	Generic name: t-amyl peroxy mono carbonate	51 FR 5592 (5593) (2-14-86)	Do.
P 86-474	Generic name: Maleic acid, styrene, methyl-methacrylate polymer	51 FR 5592 (5593) (2-14-86)	Do.
P 86-475	Generic name: Polyamide	51 FR 5592 (5593) (2-14-86)	Do.
P 86-476	Generic name: Substituted ammonium carboxylate	51 FR 5592 (5593) (2-14-86)	May 4, 1986.
P 86-477	Generic name: 1,4-benzenedisulfonic acid, 2,2'-[1,2-ethenediylbis(3-sulfo-4-phenylene)imino[6-[(disubstituted)imino]-1,2,3,5-triazine-4,2-diyl]]bis-,hexasodium salt.	51 FR 5592 (5593) (2-14-86)	Do.
P 86-478	Generic name: 1,4-benzenedisulfonic acid, 2,2'[1,2-ethenediylbis(3-sulfo-4,1-phenylene)imino-[6-[(disubstituted)imino]-1,2,3,5-triazine-4,2-diyl]]-bis-,hexasodium salt.	51 FR 5592 (5593) (2-14-86)	Do.
P 86-479	Generic name: Polymer of alkyl propenoates, substituted alkyl propenoates, ethenyl benzene and ethylene carboxylic acid.	51 FR 5592 (5593) (2-14-86)	Do.
P 86-480	Generic name: Polymer of alkyl propenoates and ethenyl benzene	51 FR 5592 (5593) (2-14-86)	Do.
P 86-481	N-[5-(dibutylamino)-2,4-pentadienylidene]-N-butyl-1-butanaminium hexafluoro-phosphate	51 FR 5592 (5593) (2-14-86)	Do.
P 86-482	N-[5-(dibutylamino)-2,4-pentadienylidene]-N-butyl-1-butanaminium chloride	51 FR 5592 (5593) (2-14-86)	Do.
P 86-483	Generic name: Diarylaroyl phosphine oxide	51 FR 5592 (5593) (2-14-86)	Do.
P 86-484	Generic name: Diarylaroyl phosphine oxide	51 FR 5592 (5594) (2-14-86)	Do.
P 86-485	Generic name: Diarylaroyl phosphine oxide	51 FR 5592 (5594) (2-14-86)	Do.
P 86-486	Generic name: Diarylaroyl phosphine oxide	51 FR 5592 (5594) (2-14-86)	Do.
P 86-487	Generic name: Monosubstituted phenly azo disubstituted naphthalene sulfonic acid, substituted alkyl amine salt	51 FR 5592 (5594) (2-14-86)	May 5, 1986.
P 86-488	Generic name: Monosubstituted phenyl azo disubstituted naphthalene sulfonic acid, salt	51 FR 5592 (5594) (2-14-86)	Do.
P 86-489	Generic name: [Dimethylchloro)silyl] propyl ester of a propenoic acid	51 FR 5592 (5594) (2-14-86)	May 6, 1986.
P 86-490	Generic name: Copolymer of methacrylate acid	51 FR 5592 (5594) (2-14-86)	Do.
P 86-491	Generic name: Alkyl ether amine	51 FR 5592 (5594) (2-14-86)	Do.
P 86-492	Generic name: Alkyl ether amine	51 FR 5592 (5594) (2-14-86)	Do.
P 86-493	Generic name: Oxazolidine	51 FR 5592 (5594) (2-14-86)	Do.
P 86-494	Generic name: Aryl alkyl ketone	51 FR 5592 (5594) (2-14-86)	Do.
P 86-495	Generic name: Aryl alkyl ketone	51 FR 5592 (5594) (2-14-86)	Do.
P 86-496	Benzoic acid, 4-[[[[4-ethoxycarbonyl) phenyl]amino]methylene]-amino]-ethyl ester	51 FR 6310 (6311) (2-21-86)	May 7, 1986.
P 86-497	3,3'-carbonylbis[7-diethylamino)-2H-1-benzopyran-2-one]	51 FR 6310 (6311) (2-21-86)	Do.
P 86-498	2-Acetyl-4-oxopentanoic acid, ethyl ester	51 FR 6310 (6311) (2-21-86)	Do.
P 86-499	Generic name: Salt of substituted phenyl hydrazinoaltanoic acd derivative	51 FR 6310 (6311) (2-21-86)	Do.
P 86-500	Generic name: Tetraglycidylamine	51 FR 6310 (6311) (2-21-86)	Do.
P 86-501	Generic name: Aromatic diamine	51 FR 6310 (6311) (2-21-86)	Do.
P 86-502	Generic name: Tetraglycidylamine	51 FR 6310 (6311) (2-21-86)	Do.
P 86-503	Generic name: Aromatic diamine	51 FR 6310 (6311) (2-21-86)	Do.
P 86-504	Generic name: Alkaline metal salt of mercapto substituted heterocycle	51 FR 6310 (6311) (2-21-86)	Do.
P 86-505	Propene, 2,2-bis[p(p-nitrophenoxy) phenyl]	51 FR 6310 (6311) (2-21-86)	May 10, 1986.
P 86-506	Generic name: Halogenated aromatic ether	51 FR 6310 (6311) (2-21-86)	Do.
P 86-507	Generic name: Acrylate terpolymer	51 FR 6310 (6311) (2-21-86)	Do.
P 86-508	Generic name: Azo triazinyl benzothiazole-sulfonic acid	51 FR 6310 (6311) (2-21-86)	Do.
P 86-509	Furoic acid, barium salt	51 FR 6310 (6311) (2-21-86)	Do.
P 86-510	Generic name: Amine modified polyester polyol	51 FR 6310 (6312) (2-21-86)	Do.
P 86-511	Generic name: Modified glycol polymer	51 FR 6310 (6312) (2-21-86)	Do.
P 86-512	Generic name: Aromatic polyether	51 FR 6310 (6312) (2-21-86)	Do.
P 86-513	Generic name: Substituted nitrogen heterocycle	51 FR 6310 (6312) (2-21-86)	Do.
P 86-514	Generic name: Acrylic resin solution	51 FR 6310 (6312) (2-21-86)	May 10, 1986.
P 86-515	Generic name: Acrylic resin solution	51 FR 6310 (6312) (2-21-86)	Do.
P 86-516	Benzenediazonium, 2-methoxy-4-(phenylamino), sulfate (1:1)	51 FR 6310 (6312) (2-21-86)	Do.
P 86-517	Magnesium 2-methyl-1-pentoxide	51 FR 6310 (6312) (2-21-86)	May 11, 1986.
P 86-518	Sodium *n* butyl-, *sec*-butyl, 2-ethyl-hexylmagnesiate	51 FR 6310 (6312) (2-21-86)	Do.
P 86-519	Generic name: Polycondensate of aromatic carboxylic acid and two kinds of alcohols	51 FR 6310 (6312) (2-21-86)	Do.
P 86-520	Generic name: Substituted naphthothiazoline	51 FR 6310 (6312) (2-21-86)	Do.
P 86-521	Generic name: Brominated aromatic hydro-carbon	51 FR 6310 (6312) (2-21-86)	Do.

I. 145 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 86-522	Generic name: Fatty alkyl dithiocarbamate	51 FR 6310 (6312) (2-21-86)	Do.
P 86-523	Generic name: Amine salt of sulfonated heterocyclic compound	51 FR 6310 (6312) (2-21-86)	May 12, 1986.
P 86-524	Generic name: Copolymer of vinyl compounds	51 FR 6310 (6313) (2-21-86)	Do.
P 86-525	Generic name: Vinyl resin of vinyl chloride-acrylic acid ester copolymer with OH functional sites	51 FR 6310 (6313) (2-21-86)	Do.
P 86-526	Generic name: Acrylic copolymer	51 FR 6310 (6313) (2-21-86)	Do.
P 86-527	Generic name: Modified acrylic polymer	51 FR 6310 (6313) (2-21-86)	Do.
P 86-528	Generic name: Modified acrylic polymer	51 FR 6310 (6313) (2-21-86)	Do.
P 86-529	Generic name: Aqueous acrylic polymer	51 FR 6310 (6313) (2-21-86)	Do.
P 86-530	Generic name: Substituted acetic acid, mixed sodium and potassium salts	51 FR 6310 (6313) (2-21-86)	May 13, 1986.
P 86-531	Generic name: Substituted acetic acid, potassium salt	51 FR 6310 (6313) (2-21-86)	Do.
P 86-532	Generic name: Substituted acetic acid, sodium salt	51 FR 6310 (6313) (2-21-86)	Do.
P 86-533	Generic name: Substituted acetic acid	51 FR 6310 (6313) (2-21-86)	Do.
P 86-534	Generic name: Substituted bis 1,3,2-dioxaphosphorinane, 2,2' dioxide	51 FR 6310 (6313) (2-21-86)	Do.
P 86-535	Generic name: Unsaturated polyester	51 FR 6310 (6313) (2-21-86)	Do.
P 86-536	Substituted phenylpyrazolone	51 FR 6310 (6313) (2-21-86)	Do.
P 86-537	Substituted phenylpyrazolone	51 FR 6310 (6313) (2-21-86)	Do.
P 86-538	Substituted phenylacetamide	51 FR 6310 (6314) (2-21-86)	Do.
P 86-539	Substituted phenylacetamide	51FR 6310 (6314) (2-21-86)	May 13, 1986.
P 86-540	Generic name: Mixture of metallic aromatic amides	51FR 6310 (6314) (2-21-86)	Do.
P 86-541	Generic name: Alkyl heterocyclic carbamoyl halide	51FR 7118 (2-28-86)	May 18, 1986.
P 86-542	N-nitrosophenylhydroxylamine ethanol amine salt	51FR 7118 (2-28-86)	Do.
P 86-543	Generic name: Quaternary ammonium salt	51FR 7118 (2-28-86)	Do.
P 86-544	Butanedioic acid, sulfo-1,4-bis(3,3,4,4,5,5,6,6,7,7,8,8-tridecafluorooctyl)ester, sodium salt	51FR 7118(7119) (2-28-86)	Do.
P 86-545	Generic name: Alkoxysilane-isocyanate terminated polyether based urethane prepolymer	51FR 7118 (7119) (2-28-86)	May 19, 1986.
P 86-546	Generic name: Alkoxysilane terminated polyisocyanate	51FR 7118 (7119) (2-28-86)	Do.
P 86-547	Generic name: Oxime terminated polyurethane	51FR 7118 (7119) (2-28-86)	Do.
P 86-548	Generic name: Alicyclic aliphatic polyester	51FR 7118 (7119) (2-28-86)	Do.
P 86-549	Generic name: Acrylate modified alicyclic urethane	51FR 7118 (7119) (2-28-86)	Do.
P 86-550	Generic name: Styrenated acrylic polymer	51FR 7118 (7119) (2-28-86)	Do.
P 86-551	Generic name: Polyurethane of isophorone diisocyanate	51FR 7118 (7119) (2-28-86)	Do.
P 86-552	Generic name: Hydrocarbon modified maleated rosin ester	51FR 7118 (7119) (2-28-86)	Do.
P 86-553	Benzoic acid, 4-[[(methylphenylamino) methylene]]-ethyl ester	51FR 7118 (7119) (2-28-86)	Do.
P 86-554	Poly(oxy-1,2-ethanediyl), alpha-(1-oxo-2-propenyl)-omega-(dodecyloxy)-	51FR 7118 (7119) (2-28-86)	Do.
P 86-555	Generic name: Acryloure thane	51FR 7118 (7119) (2-28-86)	Do.
P 86-556	Generic name: Butylaminosilane	51FR 7118 (7119) (2-28-86)	Do.
P 86-557	Generic name: 2,4-diamino-5-[[(p-acetyl-aminophenylazo)sulfocarbopolycyclic azo]-hydroxysulfocarbopolycyclic azo]-benzene-sulfonic acid salt.	51FR 7118 (7119) (2-28-86)	Do.
P 86-558	Generic name: 2,4-diamino-5[[(p-acetyl-aminophenylazo)sulfocarbopolycyclic azo]-hydroxysulfocarbopolycyclic azo]-benzene-sulfonic acid, substituted alkylamine salt.	51FR 7118 (7120) (2-28-86)	Do.
P 86-559	Generic name: Lithium hyperoxoperborate	51FR 7118 (7120) (2-28-86)	Do.
P 86-560	Generic name: Urethane oligomer	51FR 7118 (7120) (2-28-86)	May 20, 1986.
P 86-561	Generic name: Modified styrenated acrylic water resin	51FR 7118 (7120) (2-28-86)	Do.
P 86-562	Generic name: Perfluoroalkyl epoxide	51FR 8009 (8010) (3-7-86)	May 21, 1986.
P 86-563	Generic name: Hydrocarbon and Bisphenol-A modified rosin maleic adduct	51FR 8009 (8010) (3-7-86)	Do.
P 86-564	Generic name: Modified fatty acids, esters	51 FR 8009 (8010) (3-7-86)	Do.
P 86-565	Generic name: Urethane-modified polyester-acrylic copolymer	51 FR 8009 (8010) (3-7-86)	Do.
P 86-566	1-decanamine, N-decyl-N-methyl-N-oxide	51 FR 8009 (8010) (3-7-86)	Do.
P 86-567	Generic name: Peri acid phenetidide alkylanilide	51 FR 8009 (8010) (3-7-86)	May 24, 1986.
P 86-568	Methoxyacetyl chloride	51 FR 8009 (8010) (3-7-86)	Do.
P 86-569	N-[3-(dibutylamino)-1,3-butanaminium propadienylidene]-N-butyl-1-butanaminium chloride	51 FR 8009 (8010) (3-7-86)	Do.
P 86-570	N-[3-(dibutylamino)-1,3-propadienylidene]-N-butyl-1-butanaminium hexafluorophosphate	51 FR 8009 (8010) (3-7-86)	Do.
P 86-571	Generic name: Alkenes, reaction products 2,5-furandione	51 FR 8009 (8010) (3-7-86)	April 21, 1986.
P 86-572	Generic name: Alkenes, reaction products with 2,5-furandione and substituted alkyl amine	51 FR 8009 (8010) (3-7-86)	Do.
P 86-573	4,4'-bis(4-anilino-6-substituted-1,3-5-triazin-2-ylamino)substituted stilbene	51 FR 8009 (8010) (3-7-86)	May 25, 1986.
P 86-574	Generic name: Substituted furanone	51 FR 8009 (8011) (3-7-86)	Do.
P 86-575	Generic name: Imidazoline	51 FR 8009 (8011) (3-7-86)	Do.
P 86-576	Generic name: Aryl alkyl oxime	51 FR 8009 (8011) (3-7-86)	Do.
P 86-577	Generic name: Diphenol dicyanate	51 FR 8009 (8111) (3-7-86)	May 26, 1986.
P 86-578	Generic name: Dicyanate ester oligomer	51 FR 8009 (8011) (3-7-86)	Do.
P 86-579	Generic name: Diphenol dicyanate	51 FR 8009 (8011) (3-7-86)	Do.
P 86-580	Generic name: Dicyanate ester oligomer	51 FR 8009 (8011) (3-7-86)	Do.
P 86-581	Generic name: A copolymer of 4,4-isopropylidene diphenol-epichlorohydrin resin and phosphoric acid ethylene oxide adduct.	51 FR 8009 (8011) (3-7-86)	Do.
P 86-582	Generic name: Hydrocarbon and octylphenol modified rosin maleric ester	51 FR 8009 (8011) (3-7-86)	Do.
P 86-583	Generic name: Unsaturated dimer, acids, esters with carboxy terminated butadiene-nitrile rubber epoxidized	51 FR 8009 (8011) (3-7-86)	Do.
P 86-584	Generic name: Polyhydric phenol, poly diazo naphthoquinone sulfonate	51 FR 8009 (8011) (3-7-86)	Do.
P 86-585	Generic name: Quaternary ammonium salt	51 FR 8009 (8012) (3-7-86)	Do.
P 86-586	Generic name: Substituted naphthalene carboxamide	51 FR 8009 (8012) (3-7-86)	May 27, 1986.
P 86-587	Generic name: Blocked isocyanate homopolymer	51 FR 8009 (8012) (3-7-86)	Do.
P 86-588	Poly(oxy-1,2-ethanediyl), alpha-(2-methyl-1-oxo-2-propenyl)-omega-(dodecyloxy)-	51 FR 8009 (8012) (3-7-86)	Do.
P 86-589	Generic name: Alkylamine distillation residues	51 FR 8009 (8012) (3-7-86)	Do.
P 86-590	Generic name: Thermoplastic polyurethane	51 FR 8009 (8012) (3-7-86)	Do.
P 86-591	Generic name: Ionomer polymer (ethylene-methacrylic acid copolymer in salt form)	51 FR 8889 (3-14-86)	May 28, 1986.
P 86-592	1,3,5-napthalenetrisulfonic acid-7[[4-[[4-[(4-substituted-6-halo-,1,3,5-triazin-2-yl)amino]phenyl]azo]substituted phenyl]azo-, mixed sodium and potassium salts.	51 FR 8889 (8890) (3-14-86)	Do.
P 86-593	Generic name: Modified formal polymer	51 FR 8889 (8890) (3-14-86)	Do.
P 86-594	Generic name: Modified formal polymer	51 FR 5591 (2-14-86)	Feb. 20, 1986.
Y 86-68	Generic name: Pyrrolidone-polyamide polymer	51 FR 5591 (2-14-86)	Feb. 23, 1986.
Y 86-69	Generic name: Crosslinked sodium acrylate copolymer	51 FR 5591 (2-14-86)	Do.
Y 86-70	Generic name: Weak acid ion exchange resin	51 FR 5591 (5592) (2-14-86)	Do.
Y 86-71	Generic name: Polymer of alkenyl benzene and mixed alkyl ester of alkenyl carboxylic acids	51 FR 5591 (5592) (2-14-86)	Do.
Y 86-72	Generic name: Polymer of mixed glycols, a teraphthalate and an alkyl dicarboxylic acid	51 FR 5314 (2-21-86)	Feb. 27, 1986.
Y 86-73	Dodecanedioic acid, polymer with azacyclo-tridecan-2-one and alpha-hydro-omega-hydroxypoly(oxy-1,4-butanediyl)	51 FR 5314 (2-21-86)	Mar. 2, 1986.
Y 86-74	Generic name: Styrenated acrylic modified polyester	51 FR 7314 (2-21-86)	Do.
Y 86-75	Generic name: Thermosetting alkyd resin	51 FR 7314 (2-21-86)	Do.
Y 86-76	Generic name: Alkyd resin	51 FR 7314 (2-21-86)	Mar. 3, 1986.
Y 86-77	Generic name: Unsaturated polyester	51 FR 7314 (2-21-86)	Do.
Y 86-78	Generic name: Crosslinked acrylate copolymer	51 FR 7314 (2-21-86)	Do.
Y 86-79	Generic name: Acrylic polymer	51 FR 7314 (2-21-86)	Mar. 4, 1986.
Y 86-80	Generic name: Oil modified alkyd resin	51 FR 7314 (7315) (2-21-86)	Do.
Y 86-81	Generic name: Short oil coconut alkyd resin	51 FR 7118 (2-28-86)	Mar. 11, 1986.
Y 86-82	Generic name: Polyester of benzenedi-carboxylic acids and alkanepolyols		

I. 145 Premanufacture Notices Received During the Month—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
Y 86-83	Generic name: Alkyd copolymer	51 FR 8009 (3-7-86)	Mar. 13, 1986.
Y 86-84	Generic name: Acrylic modified alkyd	51 FR 8009 (3-7-86)	Mar. 17, 1986.
Y 86-85	Generic name: Alkyd resin	51 FR 8009 (3-7-86)	Do.

II. 121 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.

P 86-348
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P 86-466
P 86-467

III. 129 Premanufacture Notices for Which the Notice Review Period Has Ended During the Month. (Expiration of the Notice Review Period Does Not Signify That the Chemical Had Been Added to the Inventory.)

PMN No.

P 84-1137
P 85-1237
P 86-122
P 86-123
P 86-124
P 86-125
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Y 86-73

IV. 90 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/generic name	Date of commencement
P 82-390	Polymer of styrene, 2-propenoic acid, 1,1-dimethylethyl ester of 2-propenoic acid, 2-ethylhexyl ester of 2-propenoic acid, and 2-ethylhexyl ester of 2-propenoic acid, and 2-hydroxy propyl carboxylate.	Mar. 1, 1986
P 84-379	Generic name: Aromatic sulfonate of substituted heteropolycycle	Feb. 20, 1986
P 84-404	Generic name: Modified alkyd resin of phthalic anhydride and glycerine	Jan. 15, 1986
P 84-509	Generic name: Polyurethane resin	Feb. 7, 1986
P 84-825	1,3-propanediamine, N-(3-aminopropyl)-N-methyl-, epichlorohydrin, acetic acid	Feb. 20 1986
P 84-962	Generic name: Metal salt of phosphoric acid ester	Feb. 14, 1986.
P 84-1106	Generic name: Alkoxylated poly(oxyalkylene)diamine	Feb 6 1986
P 85-133	Generic name: Aliphatic olefin	Feb 10 1986.
P 85-387	Ethene, tetrafluoro-homopolymer, oxidized, (hydroxy methyl) terminated, di-2-propenoate	Feb 1, 1986
P 85-407	Condensation product of bisphenol A diglycidyl ether, tri-sec-butyl phenol and ethylene oxide	Dec. 19, 1986
P 85-579	Generic name: Sulfonated, styrene-containing polymer	Jan 29, 1986.
P 85-580	Generic name: Sulfonated, styrene-containing polymer	Do.
P 85-707	Generic name: Saturated polyester	Jan. 22, 1986
P 85-744	4-n-tetradecyl 4'-(2-methylbutyl) phenylbenzoate	Feb. 5, 1986
P 85-745	(+) 4-n-hexyloxyphenyl 4-(2-methylbutyl) biphenyl 4' carboxylate	Do
P 85-746	(+)-4-(2-methylbutyl) phenyl 4-(2-methylbutyl) biphenyl 4'-carboxylate	Do
P 85-747	(+)-4-cyanophenyl-4-(2"-methylbutyl) biphenyl 4'-carboxylate	Do
P 85-748	4-n-octyloxyl 4'-(2-methylbutyl)-phenylbenzoate	Do
P 85-749	4-n-hexyloxy 4'-(2-methylbutyl)-phenylbenzoate	Do
P 85-750	4-n-decyloxy 4'-(2-methylbutyl)-phenylbenzoate	Do.
P 85-751	4-n-dodecyloxy 4'-(2-methylbutyl)-phenylbenzoate	Do.
P 85-752	4(2-methylbutyl)phenyl 4'-n-octylbiphenyl carboxylate	Do
P 85-753	4-n-propyl 4'-(2-methylbutyl)-phenylbenzoate	Do

IV. 90 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture—Continued

PMN No.	Identity/generic name	Date of commencement
P 85-754	4-n-pentyl 4'-(2-methylbutyl)-phenylbenzoate	Do.
P 85-755	4(2-methylbutyl)phenyl 4'-n-heptylbiphenyl carboxylate	Do.
P 85-756	4-n-heptyl 4'-(2-methylbutyl)-phenylbenzoate	Do.
P 85-757	4-n-nonyl 4'-(2-methylbutyl)-phenylbenzoate	Do.
P 85-758	4(2-meithylbutyl) 4'-pentylbiphenyl carboxylate	Do.
P 85-856	Generic name: Polyester based polyurethane lacquer	Jan. 13, 1986.
P 85-960	Generic name: Substituted triazole	Jan. 29, 1986.
P 85-1051	Starch, 2-hydroxy-3-(trimethylammonio)propyl ether, chloride, sodium phosphate	Feb. 11, 1986.
P 85-1078	Polymer of N (alpha, alpha-dimethyl, meta isopropenyl benzyl), poly(oxy-1,2-ethanediyl), alpha, (nonyl phenyl) carbonate	Feb. 6, 1986.
P 85-1159	Octadecyl tolune sulfonic acid	Jan. 6, 1986.
P 85-1193	Generic name: Epoxy amine polymer	Jan. 13, 1986.
P 85-1213	Generic name: Polyurethane dispersion	Feb. 15, 1986.
P 85-1224	Polymer of N(X,X-dimethyl, meta-isopropenyl benzyl), poly(oxy-1,2-ethanediyl), X-(nonyl phenyl) methacrylic acid, ethyl acrylate	Feb. 13, 1986.
P 85-1248	Generic name: Aryloxycylophosphazene	Jan. 27, 1986.
P 85-1249	Tetra(butanone-2-oxime) silane	Jan. 14, 1986.
P 85-1250	Stannane, dibutyl-bis(triethoxysilyloxy)	Do.
P 85-1327	Generic name: Aromatic polyester	Jan. 17, 1986.
P 85-1330	Copper, [29H,31H-phthalocyaninato(2-)-N29,N30,N31,N32]-, aminosulfonyl[[2-[[4-(3-carboxypyridino)-6-methoxy-1,3,5-triazin-2-yl]amino]ethyl]amino]sulfonyl sulfo deriv., hydroxides, sodium salts.	Jan. 10, 1986.
P 85-1336	Generic name: Oil modified polyester of aromatic and aliphatic dibasic acids	Jan. 31, 1986.
P 85-1365	Generic name: Titanium IV neoalkoxy, tris(diisooctyl) pyrophosphato-O	Jan 16, 1986.
P 85-1405	Generic name: Substituted phenylazo substituted phenylazo benzenesulfonic acid, comp. with substituted alkylamine	Feb. 4, 1986.
P 85-1435	Generic name: Polyester diol	Feb. 6, 1986.
P 85-1438	Generic name: Modified acrylate terpolymer	Jan. 28, 1986.
P 85-1441	Generic name: Pyridinium, 1,1'-[sulfonylbis[3,1-phenyleneimino[6 - [[3-[[3-carboxy - 4,5 - dihydro-5-oxo-1-(4-sulfophenyl)- 1H-pyrazol-4-yl]azo]-4 - sulfophenyl]amino]- 1,3,5-triazin-4,2-diyl]]]bis [3-carboxy-, dihydroxide], tetrasodium salt.	Jan. 27, 1986.
P 85-1470	Generic name: Methylene diphenylene diisocyanate polyol prepolymer	Jan. 22, 1986.
P 85-1479	Generic name: Mixed alkyl phosphate ester	Feb. 15, 1986.
P 85-1504	Amine, hydroxlated tallow amine, reaction product with toluene diisocyanate and para-toluidine	Feb. 20, 1986.
P 85-1509	Mixed C_4 and C_5 methyl esters	Feb. 24, 1986.
P 85-1516	Generic name: Polyester containing amide groups	Feb. 10, 1986.
P 85-1522	Generic name: Modified polymer of rosin and a polyol	Feb. 5, 1986.
P 86-12	Generic name: Reaction product of bismaleimide with amino arylhydrazide	Feb. 3, 1986.
P 86-26	Generic name: Aromatic quaternary ammonium salts of phosphoric acid esters	Feb. 5, 1986.
P 86 32	Generic name: Triarylphosphite	Jan. 26, 1986.
P 86-34	Generic name: Tetrakis(triarylphosphite) nickle (o)	Feb 11, 1986.
P 86-41	Generic name: Polyalkylene oxide aliphatic diisocyanate prerpolymer	Jan. 10, 1986.
P 86-49	Generic name: Polyester	Jan. 22, 1986.
P 86-59	Generic name: Alkyd resin	Jan. 14, 1986.
P 86-74	Generic name: Urea compound	Jan. 17, 1986.
P 86-123	Generic name: Alkyd resin	Jan. 31, 1986.
P 86-129	Copper phthalocyanine, [4-sulfonamido-benzene-ethyl sulfonyl sodium sulfuric ester], (sodium sulfate)	Feb. 1, 1986.
P 86-132	Polymer of trimellitic anhydride, isophthalic acid, methylene diisocyanate, ethylene glycol, theic	Feb. 20, 1986.
P 86-168	Polymer of phthalic, 2,2,4-trimethyl-1,3-pentanediol, 2,2'-oxybis(ethanol), 2-ethyl hexanol, triphenyl phosphite and fascat 4100	Feb. 10, 1986.
P 86-171	Generic name: Modified tall oil poly alkylene polyamine	Feb. 12, 1986.
P 86-183	Generic name: Modified alkyd resin	Feb. 17, 1986.
P 86-184	Generic name: Modified alkyd resin	Feb. 18, 1986.
P 86-190	Generic name: Mixed acrylic ester copolymer with monobasic acid modified alkyd resin	Do.
P 86-195	Generic name: Quaternary ammonium salt of siloxane and amidine	Feb. 20, 1986.
P 86-200	Generic name: Alkylamine polyglycol ether	Mar. 1, 1986.
P 86-206	Generic name: Unsaturated isophtalic polyester-acrylate polymer	Feb. 20, 1986.
P 86-207	Generic name: Copolymer of unsaturated fatty acids and mixed acrylic monomers	Do.
P 86-216	Generic name: Polyurethane prepolymer	Feb. 26, 1986.
P 86-217	Generic name: Water-based polyurethane elastomer	Do.
P 86-234	Polymer of linseed oil, trimethylolethane, litharge, phosphoric acid, maleic anhydride, wood resin, isophthalic acid	Mar. 10, 1986.
P 86-237	Generic name: Amine oxide	Do.
P 86-245	Generic name: Azo condensation pigment	Mar. 3, 1986.
P 86-246	Generic name: Tetrasubstituted monoazo pigment	Do.
Y 85-36	Generic name: Acrylamide-acrylic acid terpolymer, mixed sodium ammonium salt	Jan. 10, 1986.
Y 85-37	Generic name: Acrylamide-acrylic acid terpolymer, mixed sodium ammonium salt	Feb. 10, 1986.
Y 85-62	Polymer of dehydrated castor fatty acids, monopentaerythritol, phthalic anhydride, benzoic acid	Feb. 22, 1986.
Y 85-153	Polymer of trimethylolpropane, phthalic anhydride, isophthalic acid	Jan. 30, 1986.
Y 86-16	Generic name: Polyethene wax, ester	Jan. 13, 1986.
Y 86-54	Generic name: Polyester resin of an aryl dicarboxylic acid and an alkane diol	Feb. 1, 1986.
Y 86-56	Generic name: Amine salt of styrene acrylic polymer	Feb. 4, 1986.
Y 86-60	Polymer of neopentyl glycol, adipic acid, trimethylol ethane, dimethylol proprionic acid, phthalate anhydride	Feb. 27, 1986.
Y 86-81	Generic name: Short oil coconut alkyd resin	Do.
Y 86-132	Generic name: Modified styrene acrylic emulsion polymer	Feb. 13, 1986.
Y 86-146	Generic name: Styrene acrylic modified oil	Feb. 11, 1986.

V. 18 Premanufacture Notices for Which the Review Period Has Been Suspended

PMN No.	Identity/generic name	FR citation	Date suspended
P 85-1184	Generic name: Substituted pyridine	50 FR 29476 (29477) (7-19-85)	Feb. 26, 1986.
P 85-1264	1-(4'-sulfophenyl soldium salt)-3-methyl-4-(2"-methoxy-5"-methyl-4"-ethylsulfonyl sulfonic acid ester sodium salt phenyl azo)-5-pyrazolone.	50 FR 32302 (32306) (8-9-85)	Feb. 23, 1986.
P 85-1265	2-Acetylamino-7(4'ethyl sulfonyl sulfuric acid ester potassium salt phenylazo)-8-hydroxy naphthalene-6-sulfonic acid potassium salt.	50 FR 32302 (32306) (8-9-85)	Do
P 85-1270	1-(4'-sulfophenyl potassium salt)-3-methyl-4-(2"-, 5'-dimethoxy-4"-ethyl sulfonyl sulfuric acid ester potassium salt phenylazo)-5-pyrazolone.	50 FR 32302 (32306) (8-9-85)	Do.
P 85-1274	Copper complex of 2-(2'-methoxy-5'-ethyl sulfonyl sulfuric acid ester potassium salt phenylazo)-3,6-disulfonic acid dipotassium salt.	50 FR 32302 (32306) (8-9-85)	Do.
P 85-1379	Generic name: Alkyl benzotriazole	50 FR 35314 (35316) (8-30-85)	Feb. 14, 1986.
P 85-1446	Generic name: Potassium salt of an alkoxylated fatty amine acid	50 FR 39167 (39168) (9-27-85)	Feb. 24, 1986
P 86-65	4-methyl-2-phenyl-1*H*-imidazole-5-methanol	50 FR 43456 (43458) (10-25-85)	Feb 12, 1986
P 86-66	Generic name: Substituted triazine isocyanurate	50 FR 43456 (43458) (10-25-85)	Do
P 86-67	2-methyl-1*H*-imidazole, adduct with 1,3,5-triazine-2,4,6-(1*H*,3*H*,5*H*)-*trione hydrate*	50 FR 43456 (43459) (10-25-85)	Do
P 86-69	2,4-diamino-6-[2-(ethyl-4-methyl-1H-imidazol-1-yl)-1,3,5-triazine	50 FR 43456 (43459) (10-25-85)	Do

V. 18 PREMANUFACTURE NOTICES FOR WHICH THE REVIEW PERIOD HAS BEEN SUSPENDED—Continued

PMN No.	Identity/generic name	FR citation	Date suspended
P 86-78	Nonyltoluene(methylnonylbenzene)	50 FR 46501 (46502) (11-8-85)	Feb. 27, 1986.
P 86-84	Generic name: Quaternary ammonium salt	50 FR 46501 (46502) (11-8-85)	Feb. 19, 1986.
P 86-92	Generic name: Modified acrylate polymer	50 FR 46508 (11-8-85)	Feb. 21, 1986.
P 86-164	Generic name: 1 mol of caprolactone modified by hyroxyethyl methacrylate	50 FR 48261 (48263) (11-22-85)	Feb. 10, 1986.
P 86-483	Generic name: Diarylaroyl phosphine oxide	51 FR 5592 (5593) (2-14-86)	Feb. 25, 1986.
P 86-485	Generic name: Diarylaroyl phosphine oxide	51 FR 5592 (5594) (2-14-86)	Do.
P 86-524	Generic name: Copolymer of vinyl compounds	51 FR 6310 (6313) (2-21-86)	Feb. 20, 1986.

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July 3, 1986

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 211, 310, and 314

Adverse Drug Experience Reporting Requirements for Marketed Prescription Drugs Without Approved New Drug or Abbreviated New Drug Applications; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 310, and 314

[Docket No. 84N-0311]

Adverse Drug Experience Reporting Requirements for Marketed Prescription Drugs Without Approved New Drug or Abbreviated New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to require manufacturers, packers, and distributors of marketed prescription drug products that are not the subject of approved new drug or abbreviated new drug applications to report to FDA whenever the manufacturer, packer, or distributor receives information about any adverse event that is both serious and unexpected and that is associated with the use of any of its marketed drug products. FDA is taking this action based on events in which serious adverse reactions, which were associated with an intravenous drug product (no longer marketed) that was not the subject of an approved new drug or abbreviated new drug application, were not reported to the agency by the manufacturer, packer, or distributor.

EFFECTIVE DATE: September 2, 1986.

FOR FURTHER INFORMATION CONTACT: Robert D. Bradley, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of March 21, 1985 (50 FR 11478), FDA proposed to require manufacturers, packers, and distributors of marketed prescription drug products that are not the subject of an approved new drug application (NDA) or an abbreviated new drug application (ANDA) to report to FDA (1) any adverse event that is both serious and unexpected and that is associated with the use of its marketed drug products and (2) any significant increase in the frequency of any adverse drug experience that is both serious and expected. In addition, FDA proposed to revise § 211.198 of the current good manufacturing practice regulations (21 CFR 211.198) to require procedures for the review of complaints to determine whether they include serious and unexpected adverse events that are required to be reported to FDA.

Proposed § 310.305 (21 CFR 310.305) defines such terms as "adverse drug experience," "unexpected" and "serious" experience, and an "increased frequency" of reports of adverse drug experience. It also specifies who must report; what, when, and how to report; and what records must be maintained.

In the preamble to the proposed rule, FDA pointed out that the need for this regulation was demonstrated by the delay in the reports of adverse reactions, including deaths, that were associated with a new vitamin E product (E-Ferol) that did not have an approved NDA or ANDA. There are no longer any unapproved single entity parenteral vitamin E products on the market. The agency has taken appropriate action, including revising the Compliance Policy Guide (CPG 7132c.02) (September 27, 1984; 48 FR 38190) that clarifies for the future that such new products (including single entity intramuscular vitamin E) require an approved NDA as a prerequisite to marketing.

In addition to the actions already taken, FDA believes that it is necessary for the protection of the public health to issue a final rule to require reporting of adverse reactions associated with the use of all marketed unapproved prescription drug products. The 1962 Drug Amendments to the Federal Food, Drug, and Cosmetic Act (the act) established requirements for reporting to FDA information concerning adverse effects and other clinical experiences or data relating in any way to the safety and efficacy of new drugs approved for marketing (Pub. L. 87-781 (October 10, 1962)). The agency's implementing regulations now require adverse experience reporting only for marketed drugs that have gone through the new drug approval process. Manufacturers, packers, and distributors of marketed prescription drug products that do not have approved applications are not explicitly required to report adverse drug experiences to FDA. Therefore, in order to provide FDA with the information it needs to monitor effectively the safety of all marketed prescription drug products, FDA proposed to require manufacturers, packers, and distributors of drug products without approved NDA's or ANDA's to report adverse drug experiences to the agency.

It has been agency policy that reports of adverse experiences submitted to FDA by manufacturers, packers, or distributors and the release by FDA of such reports or similar information do not necessarily reflect a conclusion by FDA or by the person submitting the reports or information that the report or information constitutes an admission that the drug caused or contributed to an adverse effect. A statement of this policy has been included in the agency's new drug regulations (see § 314.80(1) published February 22, 1985 (50 FR 7501)). To be consistent with the new drug regulations, this statement is added to the final rule as new § 310.305(g).

The terms "adverse drug experience," "adverse drug reaction," and "adverse drug event" are used interchangeably and have the same meaning for purposes of this document. (The terms are referred to in this document as "ADR.")

Comments

FDA received eight comments on the proposed rule. Most comments received were supportive of the general purpose of the regulation. A summary of the comments and the agency's response to each follows:

1. One comment recommended that the definition of "increased frequency" in proposed § 310.305(b)(5) be revised to reflect an increased rate, not an absolute increase in numbers. The comment stated that as sales increase, one would expect that ADR's also would increase.

The agency agrees. The proposed definition of "increased frequency" was the same as that adopted in the NDA Rewrite final rule—" "an absolute increase in the number of reports of an adverse drug experience received during a specified time period compared to the number of similar adverse drug experience reports received during an equivalent time period in the past." As explained in the preamble to the NDA Rewrite final rule, the agency intended to assure attention to any absolute increase in the number of serious but expected adverse drug experiences and the reporting of *significant* increases in the frequency of such experiences, which was defined as an increase in the rate of such experiences, i.e., the number of adverse drug experiences per unit of drug sales or use. It should also be noted that the focus on an "absolute" increase in the number of reports might cause an applicant not to report a true increase in rate in a setting of declining drug use.

To better reflect the agency's original intent, FDA is clarifying the definition of increased frequency by deleting the qualifier "absolute" and by incorporating into the definition an explicit recognition that increased frequency is measured by increases in the rate of adverse drug experiences, rather than the absolute number of

reports. As adopted in this final rule, the definition reads as follows: " 'Increased frequency' means an increase in the rate of occurrence of a particular adverse drug experience, e.g., an increased number of reports of a particular adverse drug experience after appropriate adjustment for drug exposure."

In a conforming amendment, the agency is also clarifying the definition of increased frequency in the regulations governing adverse drug experience reporting for new drugs and antibiotics (21 CFR 314.80). The agency finds that notice and public procedure on this revision to the definition in § 314.80 are unnecessary and contrary to the public interest. The revision merely clarifies the agency's interpretation of the definition of increased frequency. Further, it is in the public interest that the definition of increased frequency be clear and consistent in the regulations specifying the reporting requirements for unapproved drugs and approved new drugs.

2. One comment stated that proposed § 310.305(c)(4) is unclear as to the type of documentation necessary to assure FDA that it had been informed of a significant increase in frequency of a serious and expected adverse drug experience within the specified 15 working days.

It is the responsibility of the manufacturer, packer, or distributor to review the frequency of reports of adverse drug experiences that are both serious and expected periodically (at least once each year) and report any significant increase as soon as possible, but in any case within 15 working days of determining that a significant increase in frequency has occurred (§ 310.305(c)(4)). Of course, if a manufacturer, packer, or distributor receives a large number of reports within a short period of time, so that a significant increase in frequency should be readily apparent, a 15-day Alert report would be required at that juncture. (The regulations's language has been changed slightly with the term "periodically (at least once each year)" substituted for "annually" to make it clear that a review more often than once each year is necessary if a significant increase in frequency is readily apparent. This change makes § 310.305(c)(4) conform more closely to § 314.80(c)(1)(ii), which applies to approved drugs.)

The records that are required to be maintained under new § 310.305(a) should reflect when the periodic review began and when it was determined that a significant increase had occurred and would therefore provide the necessary documentation to indicate that a firm had (or had not) acted within the required time limits. The agency, therefore, does not foresee any difficulty in providing documentation concerning when a significant increase in frequency was or should have been determined.

3. Several comments requested clarification as to what would constitute a "significant increase" in the frequency of adverse drug experiences. One comment asked if the 15-day reporting requirement would be triggered if two adverse events were received in 1 year but no reports of adverse events were received during the previous year. One comment recommended that guidelines be issued to assist in determining what constitutes a "significant increase" in drug experiences.

In the **Federal Register** of June 26, 1985 (50 FR 26411), the agency announced the availability of a draft guideline entitled "Guideline for Postmarket Reporting of Adverse Drug Reactions." That draft guideline pertains to adverse drug reaction reporting based on the requirements of 21 CFR 314.80. The information provided in that guideline regarding significant increases in frequency is equally applicable to the reporting requirements for marketed prescription drugs without approved applications. The guideline explains two acceptable methods for determining a significant increase: (1) The arithmetic approach and (2) the statistical approach. The arithmetic approach considers a doubling in the rate of adverse reactions in the current period, compared to a previous period, to be a significant increase. The statistical approach used in the guideline is based on a Poison distribution in which an upper limit is set to represent doubling at the 95 percent confidence level. If frequencies reach this upper limit, the agency would consider this to be a significant increase. FDA believes this guideline provides the requested clarification.

The comment referenced above did not provide sufficient data to determine whether ADR reporting would be required. Results would be influenced by such things as the volume of sales (or drug use) in the different comparison periods and a realistic baseline for expected frequency of adverse experiences. The guideline for approved drugs points out that the baseline comparison period for expected frequencies could include data obtained from information from all previous time periods. This method could also apply to drugs not subject to approved applications. In the comment above, the figures "0-expected" and "2-observed" are too small to give accurate results without having more data and, in fact, would be useless in some types of statistical analyses. However, assuming constant sales, no previous ADR's, and the two adverse reactions occurred in a comparative time frame, and the arithmetic method were used, then 15-day reporting would be required. If the statistical approach outlined in the guideline were used, the upper limit at the 95 percent confidence limit for doubling would represent about 2.3 adverse reactions, therefore two adverse reactions could reasonably be expected to occur without triggering the 15-day reporting requirements. The guideline points out that these two methods give different results and that although the statistical approach requires some expertise in statistics, its use will result in fewer 15-day reports being required. Either approach is acceptable to FDA.

4. One comment stated that the proposal is too narrow in scope in that it is limited to prescription drugs.

The proposal was limited to prescription drugs because the basis for allowing over-the-counter (OTC) drugs to be directly available to the consumer is that OTC drugs are safer than prescription drugs. That is, under the act, in order to be marketed without a prescription, drugs must be safe for use without the supervision of a licensed practitioner. OTC drugs must have an adequate margin of safety for use without professional supervision and are thus less toxic or have less potential for harmful effects than drugs limited to prescription use. In addition, OTC drugs marketed under approved NDA's or ANDA's are already subject to adverse drug reaction reporting requirements. For example, new OTC products switched from prescription status under a supplemental NDA are subject to adverse drug reaction reporting.

OTC drug products that are marketed without approved NDA's or ANDA's should be generally recognized as safe. FDA's ongoing review of OTC drugs under the procedures set forth at 21 CFR Part 330 was established to determine the conditions under which OTC drugs are generally recognized as safe and effective and not misbranded. Data and information, including adverse reaction information, submitted under these rulemaking procedures must establish not only that the drug is actually safe, but that the drug is generally recognized as safe, in order for the applicable final rule to permit marketing without an NDA. Therefore, the agency does not believe that an ADR reporting system as established in this rulemaking concerning prescription drugs need be

required for these OTC drugs. There is, of course, no prohibition against manufacturers of OTC drugs that are marketed without approved NDA's or ANDA's voluntarily reporting ADR's, using the requirement for ADR reporting for prescription drugs as a guideline, and the agency encourages them to do so.

5. One comment stated that the proposed regulation offered nothing to discourage regulated industry from illegally marketing dangerous, untested, or inadequately tested drugs, a defect that could be remedied if FDA would adopt and announce a policy of routinely prosecuting offenders who mistakenly conclude, without an advisory opinion from FDA, that their product is one for which regulatory action has been deferred.

Although this comment goes beyond the scope of the proposed regulation, the agency advises that existing law, regulations, and compliance policy already prohibit the marketing of such new products. Section 301(d) of the act (21 U.S.C. 331(d)) prohibits the introduction or delivery for introduction into interstate commerce of any article in violation of the new drug laws (section 505 of the act (21 U.S.C. 355)). Also, section 301(a) of the act prohibits the introduction or delivery for introduction into interstate commerce of any article that is adulterated or misbranded. The act provides for prosecution, among other remedies, of persons who violate section 301 of the act. See sections 302, 303, and 304 (21 U.S.C. 332, 333, and 334). Further, in the **Federal Register** of September 27, 1984 (49 FR 38190), the agency announced the availability of revised Compliance Policy Guide 7132c.02, which provides priorities for regulating marketed new drugs without approved NDA's or ANDA's. This revised compliance policy guideline states that FDA may initiate regulatory action against marketed unapproved drug products if a drug product is first marketed after November 13, 1984, or a marketed drug product is changed after November 13, 1984, and the new product or changed product differs in certain respects from a prescription drug product that is marketed on or before November 13, 1984, for which enforcement action has been deferred. The new product or changed product will be considered sufficiently different to permit regulatory action if the product differs from the existing product in formulation, dosage or strength, dosage form, route of administration, indications for use, or intended patient population.

Also, in the preamble to the proposed rule, the agency announced that, upon promulgation of these regulations, FDA's compliance policy will be revised to provide that deferred enforcement action with respect to the new drug status of an unapproved drug product will be conditioned on compliance by manufacturers, packers, and distributors with this final rule. Therefore, any unapproved prescription drug product previously subject to the agency's deferred enforcement policy with respect to its new drug status may be immediately subject to action as an unapproved new drug in violation of section 505(a) of the act unless its manufacturer, packer, and distributor comply with the regulations requiring manufacturers, packers, and distributors of unapproved new drug products to establish and maintain records and to submit reports of serious and unexpected adverse events to FDA.

The agency believes that these actions will prevent the types of situations described in the comments.

6. One comment recommended that FDA take steps to implement regulations that require a new drug application for any new route of administration or new dosage form.

This comment is not pertinent to the proposed regulation, which concerned adverse drug experience reporting, not the status of new drugs. However, the agency points out that 21 CFR 310.3(h) states that "the newness of a drug may arise by reason (among other reasons) of * * * (5) The newness of a dosage, or method or duration of administration or application, or other condition of use prescribed, recommended, or suggested in the labeling of such drug, even though such drug when used in other dosage, or other method or duration of administration or application, or different condition, is not a new drug." Thus, existing regulations already provide the requested action of this comment. See, in addition, the response to comment 5 above concerning the revised compliance policy guide and the agency's action on unapproved prescription drugs that are marketed after November 13, 1984, that differ in route of administration or dosage form from an existing prescription drug.

7. One comment questioned the amount of time afforded a manufacturer to relay to FDA information received from packers or distributors concerning adverse drug experiences. The comment questioned why only 3 days are provided for a packer or distributor to report to the manufacturer, yet the manufacturer is permitted an additional 15 days to report to FDA. The comment also recommended that packers or distributors report adverse drug experiences to the manufacturer and to FDA simultaneously.

The agency advises that the 15-day reporting requirements apply to any person whose name appears on the label. However, in order to avoid unnecessary duplication of reporting, a packer or distributor can fulfill its reporting obligation by forwarding the adverse drug experience it receives to the manufacturer within 3 working days and maintaining records of (i) the drug experience report, (ii) the date the report was received by the packer or distributor, (iii) the date the report was sent to the manufacturer, and (iv) the name and address of the manufacturer. The manufacturer then becomes responsible for the 15-day and followup reports. An adverse reaction report usually requires the manufacturer to obtain additional information about the product, e.g., its manufacturing history and distribution and followup with the reporting physician or patient. Thus, it would be more logical, in most cases, for the manufacturer to submit the 15-day reports. Because the 15-day report is much more comprehensive than the information supplied in a 3-day report, the manufacturer is given more time to prepare its report. Of course, if a packer or distributor wishes to undertake the necessary analysis and followup, it may do so and submit the required 15-day report.

With respect to the concern expressed in the comment that the proposal provided too long a time period for reporting, the final rule provides for reporting of serious and unexpected adverse experiences as soon as possible; 15 working days is the maximum time allowed. The agency believes that reducing the time for submitting these reports or requiring packers or distributors to submit reports to FDA concurrently with their submission to the manufacturer would increase considerably the number of incomplete and redundant reports received by the agency. Such reports do not help FDA decide on a course of action, and they unnecessarily impede the effective functioning of the ADR reporting system.

8. Several comments endorsed the proposed regulation "as is" and recommended that it be issued as a final rule with no changes from what was proposed.

Based on its review of all the points raised in comments in response to the proposal, the agency agrees in substance with these recommendations and is finalizing this rule as proposed,

except for the addition of the disclaimer paragraph, the revision in the definition of "increased frequency," the change in § 310.305(c)(4), all of which are described above, and a change in § 310.305(f)(1) (changing the word "annually" to "periodically") to conform to the change in § 310.305(c)(4).

Environmental Impact

The agency has determined under 21 CFR 25.24 (a)(10) and (e)(6) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the regulatory impact and regulatory flexibility implications of the final rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 93–354). Based on the assumptions and analysis presented in the threshold assessment for the proposed regulation which is also applicable for the final regulation (a copy is on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857), the agency has estimated that this regulation will generate costs that are well below the thresholds that signify a major rule. Thus, this final rule does not require a regulatory impact analysis.

As explained in the threshold assessment, FDA estimates that the number of initial reports of a serious and unexpected adverse drug experience submitted to the agency under this rule will be approximately 1,000 per year, and the number of followup reports will be approximately 200. Assuming that an average of one to three person-hours would be required by a pharmaceutical firm to complete each report, FDA estimates that the total costs of complying with the regulation will be approximately $60,000.

FDA also concludes that this regulation will not produce a significant economic impact on a substantial number of small entities and, thus, does not require a regulatory flexibility analysis. Although small firms comprise a substantial number of the manufacturers, packers, and distributors of unapproved prescription drug products, the economic impact on these small entities would not be large enough to require a regulatory flexibility analysis. Therefore, the agency certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

Section 310.305 (c) and (f) of this final rule contains collection of information requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0210.

List of Subjects in 21 CFR

Part 211

Drugs; Manufacturing; Labeling; Laboratories; Packaging and containers; Warehouses.

Part 310

Administrative practice and procedure; Drugs; Medical devices; Reporting and recordkeeping requirements.

Part 314

Administrative practice and procedure; Drugs.

Therefore, under the Federal Food, Drug and Cosmetic Act, Parts 211, 310, and 314 are amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

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

Authority: Secs. 501, 701, 52 Stat. 1049–1050 as amended, 1055–1056 as amended (21 U.S.C. 351, 371); 21 CFR 5.10, 5.11.

2. In Part 211, § 211.198 is amended by adding a new sentence at the end of paragraph (a), to read as follows:

§ 211.198 Complaint files.

(a) * * * Such procedures shall include provisions for review to determine whether the complaint represents a serious and unexpected adverse drug experience which is required to be reported to the Food and Drug Administration in accordance with § 310.305 of this chapter.

* * * * *

PART 310—NEW DRUGS

3. The authority citation for Part 310 is revised to read as follows:

Authority: Secs. 501, 502, 503, 505, 701, 704, 705, 52 Stat. 1051–1052, 1053, 1055, 67 Stat. 477 as amended (21 U.S.C. 352, 353, 355, 371, 374) (5 U.S.C. 554); 21 CFR 5.10, 5.11.

4. Part 310 is amended by adding new § 310.305, to read as follows:

§ 310.305 Records and reports concerning adverse drug experiences on marketed prescription drugs for human use without approved new drug applications.

(a) *Scope.* FDA is requiring manufacturers, packers, and distributors of marketed prescription drug products that are not the subject of an approved new drug or abbreviated new drug application to establish and maintain records and make reports to FDA of (1) all serious, unexpected adverse drug experiences associated with the use of their drug products and (2) any significant increase in the frequency of a serious, expected adverse drug experience. These reports will enable FDA to protect the public health by helping to monitor the safety of marketed drug products and to assure that these drug products are not adulterated or misbranded.

(b) *Definitions.* The following definitions of terms apply to this section:

(1) "FDA" means the Food and Drug Administration.

(2) "Adverse drug experience" means any adverse event associated with the use of a drug in humans, whether or not considered drug related, including the following: an adverse event occurring in the course of the use of a drug product in professional practice; an adverse event occurring from drug overdose, whether accidental or intentional; an adverse event occurring from drug abuse; an adverse event occurring from drug withdrawal; and any significant failure of expected pharmacological action.

(3) "Unexpected" means an adverse drug experience that is not listed in the current labeling for the drug product and includes an event that may be symptomatically and pathophysiologically related to an event listed in the labeling, but differs from the event because of greater severity or specificity. For example, under this definition, hepatic necrosis would be unexpected (by virtue of greater severity) if the labeling only referred to elevated hepatic enzymes or hepatitis. Similarly, cerebral thromboembolism and cerebral vasculitis would be unexpected (by virtue of greater specificity) if the labeling only listed cerebral vascular accidents.

(4) "Serious" means an adverse drug experience that is life-threatening, is permanently disabling, requires inpatient hospitalization, or requires prescription drug therapy. In addition, an adverse drug experience with one of the following outcomes is always considered serious; death, congenital anomaly, cancer, or overdose.

(5) "Increased frequency" means an increase in the rate of occurrence of a

particular adverse drug experience, e.g., an increased number of reports of a particular adverse drug experience after appropriate adjustment for drug exposure.

(c) *Reporting requirements—15-day "Alert reports."* (1) Any person whose name appears on the label of a marketed prescription drug product as its manufacturer, packer, or distributor shall report to FDA each adverse drug experience received or otherwise obtained that is both serious and unexpected as soon as possible but in any case within 15 working days of initial receipt of the information. Each report shall be accompanied by a copy of the current labeling for the drug product.

(2) Each person identified in paragraph (c)(1) of this section shall submit one copy of each report to the Division of Drug and Biological Product Experience (HFN–730), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(3) Each person identified in paragraph (c)(1) of this section shall promptly investigate all serious, unexpected adverse drug experiences that are the subject of these 15-day Alert reports and shall submit followup reports within 15 working days of receipt of new information or as requested by FDA. If additional information is not obtainable, a followup report may be required that describes briefly the steps taken to seek additional information and the reasons why it could not be obtained.

(4) Each person identified in paragraph (c)(1) of this section shall review periodically (at least once each year) the frequency of reports of adverse drug experiences that are both serious and expected, received or otherwise obtained, and report any significant increase in frequency as soon as possible but in any case within 15 working days of determining that a significant increase in frequency exists. Reports of a significant increase in frequency are required to be submitted in narrative form (including the time period on which the increased frequency is based, the method of analysis, and the interpretation of the results), rather than using Form FDA-1639.

(5) In order to avoid unnecessary duplication in the submission of, and followup to, reports required in this section, including reports required by paragraph (c)(4) of this section, a packer's or distributor's obligations may be met by submission of all reports of serious adverse drug experiences to the manufacturer of the drug product. If a packer or distributor elects to submit these adverse drug experience reports to the manufacturer rather than to FDA, it shall submit each report to the manufacturer within 3 working days of its receipt by the packer or distributor, and the manufacturer shall then comply with the requirements of this section even if its name does not appear on the label of the drug product. Under this circumstance, the packer or distributor shall maintain a record of this action which shall include:

(i) A copy of each drug experience report.

(ii) Date the report was received by the packer or distributor.

(iii) Date the report was submitted to the manufacturer.

(iv) Name and address of the manufacturer.

(6) Each report submitted to FDA under this section shall bear prominent identification as to its contents, i.e., "15-day Alert report" or "15-day Alert report—followup."

(d) *Reporting form.* (1) Except as provided in paragraph (d)(3) of this section, each person identified in paragraph (c)(1) of this section shall submit each report of a serious and unexpected adverse drug experience on a Form FDA-1639 (Drug Experience Report).

(2) Each completed Form FDA-1639 should pertain only to an individual patient.

(3) Instead of using Form FDA–1639, a manufacturer, packer, or distributor may use a computer-generated FDA–1639 or other alternative format (e.g., a computer-generated tape or tabular listing) provided that:

(i) The content of the alternative format is equivalent in all elements of information to those specified in Form FDA–1639, and

(ii) The format is agreed to in advance by the Division of Drug and Biological Product Experience (HFN–730).

(4) Single copies of Form FDA–1639 may be obtained from the Division of Drug and Biological Product Experience (HFN–730), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Supplies of Form FDA–1639 may be obtained from the PHS Forms and Publications Distribution Center, 12100 Parklawn Dr., Rockville, MD 20857.

(e) *Patient privacy.* Manufacturers, packers, and distributors should not include in reports under this section the names and addresses of individual patients; instead, the manufacturer, packer, and distributor should assign a unique code number to each report, preferably not more than eight characters in length. The manufacturer, packer, and distributor should include the name of the reporter from whom the information was received. Names of patients, individual reporters, health care professionals, hospitals, and geographical identifiers in adverse drug experience reports are not releasable to the public under FDA's public information regulations in part 20 of this chapter.

(f) *Recordkeeping.* (1) Each manufacturer, packer, and distributor shall maintain for a period of 10 years records of all adverse drug experiences required under this section to be reported or reviewed periodically for a significant increase in frequency, including raw data and any correspondence relating to the adverse drug experiences, and the records required to be maintained under paragraph (c)(5) of this section.

(2) Manufacturers and packers may retain the records required in paragraph (f)(1) of this section as part of its complaint files maintained under § 211.198 of this chapter.

(3) Manufacturers, packers, and distributors shall permit any authorized FDA employee, at all reasonable times, to have access to and copy and verify the records established and maintained under this section.

(g) *Disclaimer.* A report or information submitted by a manufacturer, packer, or distributor under this section (and any release by FDA of that report or information) does not necessarily reflect a conclusion by the manufacturer, packer, or distributor, or by FDA, that the report of information constitutes an admission that the drug caused or contributed to an adverse effect. The manufacturer, packer, or distributor need not admit, and may deny, that the report or information submitted under this section constitutes an admission that the drug caused or contributed to an adverse effect.

(Collection of information requirements approved by the Office of Management and Budget under control number 0910–0210.)

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

5. The authority citation for Part 314 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 352, 353, 355, 356, 357, 371); 21 CFR 5.10, 5.11.

6. In Part 314, § 314.80(a) is amended by revising the definition for "Increased frequency" to read as follows:

§ 314.80 Postmarketing reporting of adverse drug experiences.

(a) * * *

* * * * *

"Increased frequency" means an increase in the rate of occurrence of a particular adverse drug experience, e.g., an increased number of reports of a particular adverse drug experience after appropriate adjustment for drug exposure.

* * * * *

Dated: June 10, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 86-14881 Filed 7-2-86; 8:45 am]

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Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405, 420, 442, 447, and 489
Medicare and Medicaid Programs; Intermediate Sanction for Long-Term Care Facilities; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 420, 442, 447, and 489

[HSQ-096-F]

Medicare and Medicaid Programs; Intermediate Sanction for Long-Term Care Facilities

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

ACTION: Final rule.

SUMMARY: These final regulations provide an alternative to terminating Medicare and Medicaid provider agreements with long-term care facilities that are found to be out of compliance with conditions of participation or standards. In facilities with deficiencies that do not pose immediate jeopardy to the health and safety of patients, HCFA and State Medicaid agencies will have the option of either terminating the provider agreement or denying payment for new admissions. In facilities with deficiencies that do pose immediate jeopardy to the health and safety of patients, HCFA and State Medicaid agencies must terminate the provider agreements. In such cases, under the terms of the statute, HCFA will, and the Medicaid agency may, additionally seek to impose the denial of payment sanction. These regulations are necessary to implement section 916(a) of the Omnibus Reconciliation Act of 1980. The denial of payment sanction is intended to promote correction of deficiencies without having to exclude facilities from the program.

EFFECTIVE DATE: August 4, 1986.

FOR FURTHER INFORMATION CONTACT: Matthew Brown, (301) 594-7617.

SUPLEMENTARY INFORMATION

I. Background

Providers of health care services participate in the Medicare and Medicaid programs under provider agreements which HCFA (for Medicare), and with State Medicaid agencies (for Medicaid). In order to enter into a provider agreement, a skilled nursing facility (SNF) or an intermediate care facility (ICF) must first be certified by a State survey agency as complying with conditions of participation (for SNFs) or standards (for ICFs) set forth in 42 CFR Part 405, Subpart K, and Part 442. Facilities are surveyed periodically by State survey agencies to ascertain their continued compliance with these requirements.

II. Statutory Provisions

A. Intermediate Sanction

Before the enactment of section 916 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499), if a State survey agency made a determination that a long-term care facility (SNF or ICF) does not comply with one or more of the conditions of participation or standards, the only available sanction was to terminate the facility's provider agreement under the authority of section 1866(b)(2)(B) of the Act for Medicare and of sections 1902(a)(28) and 1905 (c) and (d) of the Act for Medicaid.

Section 916 added sections 1866(f) and 1902(i) to the Act. These sections provide an intermediate sanction that constitutes an important tool to promote correction of deficiencies. The sanction is a denial of payment for new admissions for a period of 11 months. (We note that because of the operation of the statute, it is likely that the duration of the intermediate sanction period will exceed eleven months somewhat since any sanction becoming effective other than on the first day of a month will include the remainder of that month as well as the automatic eleven month period that begins on the first day of the following month. For purposes of convenience, we refer in this preamble to an eleven month intermediate sanction period.)

The denial of payment sanction is not a substitute for terminating a facility's provider agreement. Rather, the authority to impose the intermediate sanction is in addition to the long-standing authority to terminate the provider agreement of a noncomplying facility.

Therefore, a provider agreement may be terminated at any time, including during the period of the intermediate sanction, if HCFA or the State Medicaid agency determines that such action is necessary.

Under the section 916 amendments, a denial of payment sanction would remain in effect for 11 months unless, before that time, HCFA or the Medicaid agency determined that—

- The facility had corrected the deficiencies or was making a good faith effort to achieve compliance with the conditions of participation (for SNFs) or the standards (for ICFs); or
- The deficiencies were such as to require termination of the provider agreement.

B. Look Behind Authority

Section 916 also amended section 1902(a)(33)(B) and added section 1910(c) of the Act to give the Secretary "look behind" authority. This authority allows the Secretary or his or her delegate to validate State determinations as to whether a facility is in compliance with the conditions of participation (for SNFs) or standards (for ICFs). If the Secretary or his or her delegate finds that a facility does not meet the conditions of participation or standards, he or she may cancel approval or terminate the facility's participation in the Medicaid program.

C. Appeals Procedures

Section 916 did not alter the existing appeals procedures for termination of a facility's provider agreement as set forth in sections 1866(b) and 1869(c) of the Act. Accordingly, SNFs that participate in Medicare continue to have a right to a full evidentiary hearing before an Administrative Law Judge (ALJ) after the effective date of the termination. Similarly, under Medicaid, providers continue to have a right to a full evidentiary hearing either before, or if the State agency prefers, within 120 days after the effective date of termination of the provider agreement.

III. Notice of Proposed Rulemaking

On February 21, 1985 we published a proposed rule to implement section 916 of Pub. L. 96-499 (50 FR 7191). Briefly, the major provisions of the proposal were as follows:

Medicare

1. We would terminate a SNF's provider agreement if we determined that (1) the SNF no longer met one or more of the conditions of participation for SNFs and (2) the deficiencies posed immediate jeopardy to patients' health and safety.

2. In addition, we would deny Medicare payments to a facility with respect to new admissions.

3. If a facility's deficiencies did not pose immediate jeopardy to patients' health and safety, we would exercise our discretion to impose either sanction; termination, or denial of payment for new admissions.

Medicaid

We proposed that a Medicaid agency must terminate a facility's provider agreement if it determines that (1) the facility no longer meets one or more of the conditions of participation (for SNFs) or standards (for ICFs) and (2) the facility's deficiencies pose immediate jeopardy to patients' health and safety. In immediate jeopardy situations the Medicaid agency could also deny Medicaid payments for new admissions.

If the facility's deficiencies did not pose immediate jeopardy to patients'

health and safety, the Medicaid agency would have the option either to terminate the provider agreement or to deny payment for new admissions.

Medicare and Medicaid

For both programs we—

1. Proposed to define "immediate jeopardy" as any situation in which a facility's lack of compliance with one or more conditions of participation (for SNFs) or standards (for ICFs) poses a serious threat to patient's health and safety, such that immediate corrective action is necessary.

2. Set forth the procedures that HCFA would, and the Medicaid agency must, follow before imposing the denial of payment sanction:

- Opportunity for the facility to correct the deficiencies;
- Opportunity for informal hearing if the facility does not correct the deficiencies within the time specified in the approved plan of correction; and
- If the outcome of the informal hearing is adverse to the facility, notice to the facility and to the public at least 15 days before the effective date of denial.

3. Specified the time limit on the intermediate sanction (not more than 11 months) and the bases for terminating this sanction or for terminating the provider agreement either before expiration of the 11-month period, or at the end of that period.

4. Made clear that if HCFA denies Medicare payment for new admissions to a SNF that participates in both programs—

- The Medicaid agency must deny Medicaid payment for the same period that Medicare payment is denied; and
- The appeals procedures available to that SNF are the procedures provided by HCFA for Medicare providers.

5. Proposed no changes pertinent to the "look behind" provisions because we consider that they are self-executing and require no additional regulations.

IV. Analysis of and Response to Public Comments

We received 52 letters of comments from 22 State Health or Welfare agencies, 14 ombudsmen and advocacy groups, 7 State and area organizations on aging, 5 national organizations, and 4 individuals. The comments and our responses to those comments are discussed below.

A. Time Frames for Denial of Payment for New Admissions

Comment: Eighteen commenters recommended that we specify time frames for the denial of payments for new admissions. Specific comments, were as follows:

- If the denial of payments is not initiated promptly, the regulation will be ineffective and inconsistent with Congressional intent to provide for an alternative to termination action.
- Setting time frames would give providers an incentive to avoid reoccurrence of serious deficiencies.
- Prompt imposition of the intermediate sanction would ensure protection for future residents.
- Not more than 60 days should be allowed for correcting deficiencies before denial of payment is imposed.
- How will the intermediate sanction mesh with current regulations that require automatic cancellation of provider agreements sixty days after the end of the approved correction period if deficiencies are not corrected?

Response: We agree that setting time frames for the denial of payment procedural steps could lead to speedier and more uniform implementation. Therefore, the final rules provide a period of up to 60 days for the facility to correct deficiencies and achieve compliance. This period is consistent with a time limit in § 405.1907(b) of the Medicare rules.

Time frames for the whole process, including the informal hearing are being included in the instructions. This will ensure that any change required on the basis of actual experience can be incorporated promptly, in less time than it would take to amend regulations. In addition, we have submitted a legislative proposal that would eliminate the requirement for informal hearings *before* imposition of the sanction. Such a change would make this provision consistent with those applicable to terminations of facilities, insofar as they contemplate hearings *after* the effective date of termination. This legislative revision would permit speedier imposition of the intermediate sanction.

The intermediate sanction does not conflict with existing rules pertaining to time-limited agreements. Nonrenewal and automatic cancellation are still options available to HCFA and the Medicaid agency. Imposition of the intermediate sanction would not preclude termination at any time if HCFA or the Medicaid agency considers that such action is necessary. The intent of this sanction is to permit greater flexibility in dealing with SNF and ICF deficiencies and to provide an incentive for the facilities to correct the deficiencies without the need to terminate the provider agreements.

B. Immediate Jeopardy

Comment: Some commenters suggested a clearer definition of this term and more realistic examples of conditions that would lead to a finding of immediate jeopardy. In their view, the proposed examples are not typical of the situations that lead to termination actions. Others commented that the examples given to require a finding of immediate jeopardy, but represent unforeseen events that can be handled by prompt and effective action. One commenter suggested that termination be considered only for facilities that chronically and consistently fail to meet program requirements.

Response: We do not intend the definition to be as narrow as the examples in the proposed rules suggest. Although we have not changed the definition itself, we have developed new examples to highlight the fact that there may be any number of situations that pose serious threats to the health and safety of SNF or ICF patients and that, in our view, constitute "immediate jeopardy" under the statute. These additional examples are situations that we believe warrant a finding of "immediate jeopardy", requiring termination of the provider agreement.

C. Discrimination Against Medicaid Recipients

Comment: Several commenters expressed concern that the intermediate sanction will increase discrimination against Medicaid recipients as providers turn to private pay clients to maintain their income. One commenter suggested that all new admissions should be stopped, including private pay patients.

Response: Our authority under the law extends only to Medicare beneficiaries and Medicaid recipients. We believe that, through notice to the public, private pay patients will be well informed of the sanctions and will be discouraged from selecting facilities that are out of compliance with Federal requirements for program participation. This could be an additional incentive for facilities to correct deficiencies more promptly

D. Time Allowed for Correction of Deficiencies

Comment: Several commenters stated that 11 months is too long a period of time for a facility to be out of compliance.

Response: Even though sections 1866(f) and 1902(i) of the Act provide that the intermediate sanction be applied for 11 months, we anticipate that only a few if any, facilities will require that much time to achieve

compliance. We believe that the denial of payments for new admissions will give providers more incentive to correct deficiencies promptly. In any case, HCFA and State Medicaid agencies retain the authority to terminate a facility at any time during the eleven month period if they determine that such action is warranted.

E. Public Notice of Denial of Payment for New Admissions

Comment: Seven commenters recommended that the notice advising the public of the intermediate sanction be addressed to a wide segment of the community, including, e.g., area agencies on aging, social service agencies, local radio and television stations, and one suggested that the facility be required to post the notice in a conspicuous location on its premises.

Response: Currently, a notice in the local newspaper is the procedure followed and accepted by HCFA for termination actions. (If a newspaper notice cannot be arranged in the time allotted a press release to the local radio and television stations is acceptable.) However, we agree that the notice would be more effective if it were addressed to a wider segment of the public. We will include recommendations to that effect in our guidelines.

We believe that the posting of a notice in the facility, and the prospect of having to move to another facility, would unnecessarily raise anxiety levels without providing any benefits in addition to those achieved by public notice.

F. Making a Good Faith Effort To Achieve Compliance

Comment: Commenters were against lifting the sanction for facilities making a good faith effort to achieve compliance. One commenter stated that allowing sanctions to be lifted for "good faith efforts" would be very costly as most sanctions would be for short periods of time. Another commenter stated that failure to insist that jeopardy conditions be fully corrected could create a pattern of noncompliance in problem facilities.

Response: The law itself provides that the intermediate sanction must be removed if the Secretary, under Medicare, or the State agency under Medicaid determines that a facility is making a good faith effort to achieve compliance. We cannot deny that option. We will, however, establish criteria to help surveyors determine whether facilities are making a good faith effort to achieve substantial compliance. We will also monitor facilities that are operating under the intermediate sanction.

G. Conditions and Standards

Comment: One commenter expressed concern about the rules which state that a sanction may be imposed on a SNF for noncompliance with "conditions of participation and standards". The commenter noted that statutory and committee report language make clear that the sanction may be applied only for failure to comply with one or more conditions and not when the SNF is found deficient with respect only to specific standards within a condition. The commenter suggested that reference to standards be removed from rules that apply to SNFs.

Response: These final rules refer only to "conditions (for SNFs) or standards (for ICFs)". We have concluded that it is unnecessary to refer to "standards" for SNFs. The intent was to give recognition to the fact that some of the standards in the SNF conditions of participation are based on statutory requirements. We realize, however, that those standards are so important that failure to meet them would more likely result in a finding of noncompliance with the conditions that include those standards.

H. Effect of the Sanction on Satellite Facilities

Comment: One commenter was concerned with the effect the intermediate sanction will have on satellite ICFs/MR.

Response: The effect depends on whether the satellite home is included in the "parent" ICF/MR's certification and provider agreement. The usual situation is for the satellite to have its own certification and provider agreement. In that case, a sanction on the "parent" has no effect on the satellite. However, if the satellite is included in the parent ICF/MR's provider agreement, it is subject to any sanction imposed on that ICF/MR.

I. Shortening the Notice of Termination

Comment: In the NPRM we requested comments on whether to shorten the advance notice of termination from 15 days to 2 when there is a finding of "immediate jeopardy". Eleven of the 12 responses on this issue were in favor of the 2-day advance notice.

Response: Consistent with the public response, we have retained the 15-day notice in situations that do not pose immediate jeopardy, and provided for at least a 2-day notice in immediate jeopardy situations. We believe that the shortened notice period is necessary to adequately protect beneficiaries who are by definition exposed to grave and imminent health and safety hazards in such situations.

J. Look Behind Authority

Comment: Several commenters stated that the law and regulations do not make clear when and on what bases (e.g., complaints from residents or ombudsmen?) the Secretary uses this authority. They considered that it is also necessary to establish standards for imposing sanctions on the State survey agencies. Others requested–

- A guide for communicating the process and results of "look behind" surveys and follow-ups when Federal and State final determinations differ; and
- That the circumstances, process and timetable for "look behind" action be fully explained in the regulations.

Response: "Look behind" surveys are performed by regional staff of HCFA's Bureau of Health Standards and Quality on a regular basis in a substantial number of Medicaid SNFs and ICFs. If HCFA, as the Secretary's delegate, determines that a Medicaid SNF or ICF does not meet participation requirements, HCFA will cancel that facility's approval for participation in Medicaid. Section 1902(a)(33)(B) and 1910(c) of the Act provide authority to do this. We have determined that those provisions are self-executing, and can be implemented without new regulations. Procedures for this remedy have been included in HCFA general instructions.

K. Patients Readmitted After Hospital Stay

Comment: Commenters requested that a patient who is readmitted to a facility after hospitalization during the denial of payment period not be considered a "new admission" and further, that this be specified in the regulations.

Response: Patients discharged from a facility, regardless of whether they go to a hospital, another facility, or home, if they later return to the facility, must be considered new admissions. The only exception would be under a "reserved bed" policy.

Medicare does not pay for reserved beds. However, § 447.40(a) of the Medicaid rules provides that the Medicaid agency may pay for reserving a bed during a recipient's temporary absence from an inpatient facility if—

(1) The recipient's plan of care provides for absences other than for hospitalization; and

(2) The State plan provides for such payments and describes any limitations on the reserved bed policy.

In reviewing § 447.40(a), we realized that this section, which in 1978 redesignated previous § 540.30(d), had shortened the content to the point of creating confusion. The previous section specified that FFP was available for reserving a bed for a recipient in a long-term facility "during temporary hospitalization for an acute condition . . .", as well as during a "leave of absence", and required that "in case of a leave of absence, the patient's plan of care provides for such absence". Section 447.40(a) could be read as excluding temporary absence for hospitalization from the reserved-bed policy. This change appears to have been unintended as witnessed by the fact that it was not discussed in the 1978 preamble and by the fact that, in practice, FFP has continued to be available in expenditures for reserving beds during recipients temporary absence for hospitalization. It seems clear that there was no requirement to include hospitalization in the "plan of care" because need for hospitalization for acute care cannot be anticipated and "planned". We have revised § 447.40(a) to preclude any possible confusion and to restore the meaning that coincides with continued practice.

L. Substantial Compliance

Comment: Two commenters recommended that the term "substantial" be used throughout the regulations, for consistency with the language of the statute and to make clear that it is lack of *substantial* compliance that is the basis for imposition of either sanction—termination or denial of payment for new admissions.

Respsonse: "Substantial" is a very imprecise term. The statutory language—"no longer substantially meets the provisions of section 1861(j)" has always been interpreted by us to mean "failure to comply with one or more of the conditions of participation". We believe it is preferable to use this more precise language in the regulations. Guidelines for State survey agencies would be included in HCFA general instructions. Consistent with this concept, we have also deleted the term "substantial" from § 489.53(a)(1) of the Medicare rules.

M. State Sanctions

Comment: Several commenters considered that States need the option of applying their own sanctions instead of the intermediate sanction.

Response: The intermediate sanction regulations do not prohibit State agencies from also imposing their own sanctions as authorized by State law. However, State sanctions may not supersede or otherwise conflict with Federal sanctions.

N. Dual Suspension

Comment: Commenters requested clarification of § 442.118(a)(3) with respect to facilities that participate in both programs. They understood that in the past, when Medicare terminated a SNF that also participated in Medicaid, that SNF was still permitted to admit and retain ICF patients. Commenters urged that this provision be changed to deny payment for ICF as well as SNF patients for the same period that Medicare payments are denied.

Response: In cases of dually participating facilities that provide different levels of care, both levels will not necessarily be out of compliance with Federal requirements. For instance, a dually participating facility could be certified as a Title XVIII SNF and a Title XIX ICF, with ICF residents cared for in a separate part of the facility. If the survey agency finds that the SNF is out of compliance and the ICF meets applicable standards, there would be no legal grounds to deny payment for new admissions to the ICF. However, if SNF patients and ICF residents were intermingled in the same area, and the sanction is based on deficiencies that affect both SNF conditions and ICF standards, the sanction would apply to all new admissions.

V. Provisions of the New Regulations

The statutory amendments discussed above under section II are implemented by new §§ 442.118 and 442.119 for Medicaid, and §§489.60 through 489.64 for Medicare. These new rules—

1. Provide as follows:

a. The intermediate sanction may be applied only when a facility is out of compliance with one or more of the conditions of participation (for SNFs) or standards (for ICFs).

b. If the facility's deficiencies do not pose immediate jeopardy to patient health and safety, HCFA or the Medicaid agency may either terminate the provider agreement or deny payment for new admissions. (In determining which sanction to impose, HCFA considers factors such as the facility's compliance history and the number and seriousness of the deficiencies.)

c. If the facility's deficiencies do pose immediate jeopardy to patient health and safety, HCFA or the Medicaid agency must terminate the provider agreement. In such cases, under the terms of the statute, HCFA will, and the Medicaid agency may, additionally seek to impose the intermedicate sanction.

d. If HCFA applies the intermediate sanction to a SNF that also participates in Medicaid, HCFA will require the Medicaid agency to deny Medicaid payments for the same period for which Medicare payments are denied.

e. It is the Medicare appeals procedures that are available to a sanctioned SNF that participates in both programs. (See §§ 442.119(c) and 489.60(b).)

2. Require HCFA or the Medicaid agency to fulfill the following requirements before denying payment for new admissions:

a. Give the facility notice of the deficiences and up to 60 days to correct those deficiencies.

b. If the facility does not correct the deficiencies during the time allowed, give the facility notice and opportunity for an informal hearing.

c. If the outcome of the informal hearing decision is to deny payment for new admissions, give the facility and the public advance notice at least 15 days before the effective date of the sanction.

Denial of payment for new admissions does not apply to individuals who were in the facility before the effective date of denial, even if they become eligible for Medicaid or Medicare after that date. (See §§ 442.118(b) and 489.62.)

3. Provide that the intermediate sanction continues in effect for 11 months unless, before that time, HCFA or the Medicaid agency determines that—

- The facility has corrected the deficiencies or is making a good faith effort to achieve compliance with the conditions or standards; or
- The facility has ceased efforts to comply, or there is a deterioration in care or services.

In the first instance, the denial of payment sanction is lifted. In the second instance, the sanction is not lifted, but termination procedures are initiated.

The submission of an acceptable plan of correction does not, of course, constitute a "good faith effort". The facility must be making significant progress towards achieving actual compliance. (See §§ 442.119 and 489.64.)

4. Provide that HCFA will, and the Medicaid agency must—

a. Terminate a facility's provider agreement upon a finding that the facility has been unable to achieve compliance with the conditions (for SNFs) or the standards (for ICFs) during the time the denial of payment was in effect.

b. Make the termination effective on the first day following the last day of the 11-month denial of payments period; and

c. Follow the usual procedures for appeals from termination, as set forth in Part 405, Subpart O of the Medicare rules, and in Part 431, Subpart D of the Medicaid rules. (See §§ 442.119 and 489.64.)

VI. Discussion of Hearings Provisions

The informal hearing on proposed denial of payments would be offered by HCFA for SNFs that participate in Medicare, and by the Medicaid agency for facilities that participate only in Medicaid. The sole focus of the informal hearing would be the results of the survey upon which HCFA or the Medicaid agency based its decision to impose the intermediate sanction. It would provide the facility an opportunity to present, in writing or in person, through counsel if desired, evidence and documentation to show that it was not out of compliance with the conditions or standards for which deficiencies were cited. The facility would receive, from HCFA or the Medicaid agency, a written notice setting forth the reasons for the hearing decision.

If the decision is to impose denial of payment, the facility would receive notice stating the effective date of denial (no earlier than 15 days after the date on the notice), the duration of the sanction, and the reasons for the denial of payment, and the public would be notified at the same time.

We are not providing any additional hearing rights for the intermediate sanction for two reasons. First, while the denial of payments will no doubt impose a hardship of varying degrees upon affected facilities, this sanction is, by definition, a lesser one than termination and, accordingly, does not require the formal hearing that is appropriate for termination actions. We consider that the informal hearing is fully adequate to resolve the issues that prompted imposition of the intermediate sanction. Second, should a facility fail to achieve full compliance with program requirements before the expiration of the 11-month intermediate sanction, and thereby face termination, it would be entitled to the full evidentiary hearing that accompanies all terminations under both the Medicare and Medicaid programs. We believe that to provide a facility first with an informal hearing, then with a full evidentiary hearing if the informal hearing decision is adverse to the facility, and finally, with an additional full evidentiary hearing if the facility faces termination, would be unreasonably burdensome and time consuming, and is not necessary to balance the facility's right to be fairly heard and the agency's interest in effective and efficient program administration.

VII. Changes in Existing Regulations

A. Definition of "Immediate Jeopardy" and "New Admissions"

Since it is the presence or absence of "immediate jeopardy" that determines whether HCFA or the Medicaid agency has the option of terminating the provider agreement or denying payment for new admissions, a definition was added to § 489.3 of the Medicare rules and § 442.2 of the Medicaid rules. We have defined "immediate jeopardy" as situation so threatening to patients' health and safety that it requires immediate corrective action.

We consider that immediate corrective action is needed in situations that, if not corrected, are likely to endanger the health and safety of patients. Examples of such situations are:

- Patients found to be under physical or chemical restraint in excess of doctor's orders.
- Evidence of gross patient neglect, such as patients lying in feces and other waste.
- Instances of malnutrition or dehydration that are unrelated to the patient's condition and are the result of poor patient care.
- Failure to maintain required fire protection elements, such as fire alarm or sprinkler systems, in sound operating condition.
- Widespread insect or rodent infestation indicative of food contamination or the possible spread of infection.
- Gross mishandling of drugs.
- Bare electrical wiring that presents an immediate fire hazard.

In the Medicaid rules we have also defined "new admission" to specify that, if the State plan includes payment for reserved beds, patients readmitted to a reserved bed are exempt from the denial of payment sanction. A reserved bed is a SNF or ICF bed reserved for a Medicaid recipient who leaves the facility temporarily (for instance, for required hospitalization or for a brief home visit included in the plan of treatment) and is expected to return to the reserved bed at the end of the temporary absence.

B. Appeals

Section 916 did not change appeal rights of providers that face termination of their provider agreements. Accordingly, existing regulations continue in effect. The Medicare rules, issued under authority of sections 1866(b)(2) and 1869(c) of the Act, provide that a full evidentiary hearing is available to the provider after the effective date of termination of the provider agreement (§ 489.53(d)). The Medicaid rules (Subpart D of Part 431), applicable to Medicaid-only SNFs and all ICFs, provide that the Medicaid agency must offer the full evidentiary hearing either before, or within 120 days after, the effective date of termination of the agreement.

Specific appeals procedures for Medicare providers and suppliers are set forth in Subpart O of Part 405 of the Medicare rules. The termination of a provider agreement for failure to comply with the conditions of participation is an "initial determination" subject to the Subpart O provisions. However, since the intermediate sanction does not exclude the facility from the program and is committed, we believe, to the agency's discretion, the Subpart O provisions do not apply.

Accordingly, in § 405.1505, which lists administrative actions that are not initial determinations (and therefore not subject to the Subpart O provisions), we have added a new paragraph (o) to make clear that the following are not initial determinations:

- A finding that the SNF's deficiencies pose immediate jeopardy to patients' health and safety.
- The choice of sanction (termination of provider agreement or denial of payments for new admissions) when the SNF's deficiencies do not pose immediate jeopardy.

These clarifying changes ensure that there will be no confusion regarding the Congress, stated intent not to change the existing appeals procedures.

C. Exemption From Denial of Payment Sanction Under Reserved Bed Policy

Consistent with our previous discussion of pertinent comments and of the definition of "new admission" under topic A of this portion of the preamble, we have revised § 447.40(a) to clarify the intended meaning by providing that the Medicaid agency may pay for reserved beds if—

(1) The State plan provides for such payments and specifies any limitation on the policy; and

(2) Absences for purposes other than hospitalization are included in the patient's plan of care.

D. Required Termination

Even before the statutory amendment, termination would have been used in situations that endangered patients' health and safety. Now that there is a specific statutory mandate for terminating provider agreements in

immediate jeopardy situations, we have made the rules even more precise by amending § 489.53 for Medicare, and adding § 442.117 to the Medicaid rules. New § 489.53(b) states that HCFA will terminate a SNF's provider agreement if the SNF's deficiencies pose immediate jeopardy to patients' health and safety. New § 442.117—

- Requires the State survey agency to terminate a facility's certification when the facility's failure to meet applicable conditions (for SNFs) or standards (for ICFs) poses immediate jeopardy; and
- Cites the applicable termination procedures that the Medicaid agency must follow.

E. Shortened Notice Period for Immediate Jeopardy Situations

As indicated in the discussion of comments, we raised, and obtained a favorable response on, the issue of whether to shorten the notice period when the facility's patients are exposed to immediate jeopardy. Consistent with the favorable response, we amended § 489.53 to provide an exception to the 15-day notice of termination. When a SNF's deficiencies pose immediate jeopardy to patients' health and safety, HCFA will give notice of termination at least 2 days before the effective date of termination of the provider agreement.

F. Authority To Terminate Provider Agreements

Final regulations published by the Department on September 13, 1985 (50 FR 37370) reflect several changes in delegations of authority. One of those changes means that, in certain circumstances, the Department's Office of the Inspector General (OIG), rather than HCFA, is responsible for termination and notice of termination of a provider agreement, and for reinstatement after termination. To make clear when the authority rests with HCFA, and when with the OIG, we revised §§ 489.53 and 489.57 and added a new § 489.54. We also amended §§ 420.105, 420.107, and 420.114 to conform cross references to the Part 489 changes.

VIII. Corrections and Organizational Changes

A. In Subpart O of Part 405, which deals with determinations and appeals procedures, we corrected outdated cross-references in §§ 405.1501 and 405.1502.

B. In Part 489, which deals with provider agreements under Medicare, we redesignated § 489.50—Withholding of payment for failure to make timely utilization review—as § 489.66 and transferred it to the new Subpart F established for the rules on denial of payment for new admissions. This brings together policies on payment and leaves Subpart E for policy on termination and reinstatement of provider agreements.

IX. Legislative Proposals

We have made two legislative proposals, aimed at broadening the use of the intermediate sanction. One would permit the use of this sanction for LTC facilities found deficient as a result of Federal "look-behind" activities. The other would authorize use of this sanction for any provider or supplier. (Both of these proposals are included in the Health Care Financing Fraud and Abuse Amendments of 1985.)

X. Impact Analysis Statement

A. Executive Order 12291

Consistent with Executive Order 12291, we prepare and publish a regulatory impact analysis for any 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 geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have determined that these regulations are not likely to have an annual economic effect of $100 million or meet other threshold criteria of section 1(b) of the Order.

Lack of data regarding the number of potentially affected facilities, and the extent of their deficiencies, limits our ability to estimate with precision the impact of these provisions. However, we are committed to the widespread use of the intermediate sanction in facilities with uncorrected deficiencies. Although we cannot quantify exact savings, we believe that some savings will be achieved. Based on our past experience with facility terminations, we can make certain assumptions:

- Although we will encourage the use of the intermediate sanction whenever the situation permits, we anticipate that most facilities will come into compliance before the correction and appeals periods elapse.
- We believe that imposing denial of payment for new admissions will be slightly less costly (to the facility, the State, and the Federal Government) than terminating the facility.

The costs of administrative hearings and resurveys are incurred regardless of which sanction is imposed. However, with the intermediate sanction, the cost of transferring patients to other facilities or to alternate care would be saved. Since facilities have always been required to correct deficiencies in order to continue to participate in the program, the availability of an intermediate sanction does not of itself lead to additional costs to the facility.

In summary, available information does not indicate that the annual effect of this proposed rule would exceed $100 million or any of the other threshold criteria. Therefore, an impact analysis is not required.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (Pub. L. 96–354), we prepare and publish a regulatory flexibility analysis (RFA) unless the Secretary certifies that the regulations will not have a significant impact on a substantial number of small entities.

We estimate that about 13,000 SNFs and ICFs participate in the Medicare and Medicaid programs. Lack of program data precludes exact estimates of the significance of the impact or the number of affected small entities. However, the assumptions noted above in the Executive Order discussion lead us to conclude that these new rules will not significantly affect a substantial number of these facilities. The relatively few facilities that may be affected can minimize the economic impact through immediate compliance with the long-standing conditions of participation (for SNFs) or standards (for ICFs).

We also believe that the intermediate sanction is more advantageous to facilities and to beneficiaries than termination of the provider agreement because—

- It permits patients to remain in the facility while the deficiencies are being corrected; and
- It does not deprive the facility of all reimbursement for Medicare and Medicaid patients, as is the case when the provider agreement is terminated.

For the reasons given above, we have determined, and the Secretary certifies, that these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, we have not prepared an RFA.

XI. Paperwork Reduction Act of 1980 (Pub. L. 96–511)

Section 442.118(b) of this rule contains information collection requirements that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980. When OMB approval is obtained, we will publish an appropriate notice in the **Federal Register**. If you have comments on this provision, please address them to Fay Iudicello, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building (Room 3208), Washington, DC 20503.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 420

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicare.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Chapter IV is amended as set forth below:

A. In Part 405, Subpart 0 is amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The subpart title is revised to read as follows:

Subpart O—Appeals Procedures for Determinations that Affect Participation in the Medicare Program

2. The authority citation continues to read as follows:

Authority: Secs. 1102, 1366, 1869, 1871, and 1872, Social Security Act; 42 U.S.C. 1302, 1395cc, 1395ff, 1395hh, and 1395ii, unless otherwise noted.

3. Section 405.1501 is amended as set forth below:

a. The section heading, the introductory text of paragraph (a), and paragraph (a)(3) are revised to read as follows:

§ 405.1501 Determinations and appeals for providers and suppliers of Medicare services.

(a) The provisions contained in this Subpart O govern the procedure for making and reviewing determinations with respect to:

* * * * *

(3) The termination of a provider agreement because the provider no longer meets the applicable conditions of participation set forth elsewhere in this chapter, or for any other reason listed in § 489.53(a) or § 489.54(a) of this chapter.

* * * * *

b. In paragraph (d), "(see Subpart F of this part 405)." is changed to "in accordance with Part 489 of this chapter."

* * * * *

4. In § 405.1505, the heading is revised and a new paragraph (o) is added to read as follows:

§ 405.1505 Administrative actions that are not initial determinations.

* * * * *

(o) With respect to a SNF that is not in compliance with an applicable condition of participation—

(1) The finding that the SNF's deficiencies pose immediate jeopardy to patients health and safety; and

(2) When the SNF's deficiencies do not pose immediate jeopardy, the decision to deny payment for new admissions.

B. Part 420 is amended as set forth below:

1. The part title is revised to read as follows:

PART 420—INTEGRITY: MEDICARE

2. The authority citation continues to read as follows:

Authority: Secs. 1102, 1128, 1862(d), 1862(e), 1866(b)(2) (D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302, 1302a–7, 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E), and (F), 1395hh, 1396a(a)(39), and 1396b(i)(2)), unless otherwise noted.

3. Cross references to Part 489 are corrected as follows:

a. *§ 420.100 [amended]*

Reference to "§ 489.53(a), (6), (7), or (8) of this chapter," is changed to "§ 489.54 of this chapter.".

b. *§ 420.105 [Amended]*

In paragraph (a), reference to "§ 489.53(a), (6), (7), or (8) of this chapter," is changed to "§ 489.54 of this chapter,".

c. *§ 420.107 [Amended]*

In paragraph (a), reference to "§ 489.53(a), (6), (7), or (8)" is changed to "§ 489.54 of this chapter,".

d. *§ 420.114 [Amended]*

In paragraph (c), reference to "§ 489.53(a), (6), (7), or (8), see § 489.53(b) of this chapter" is changed to read "§ 489.54 of this chapter, see paragraph (b) of that section."

C. Part 442 is amended as set forth below:

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

1. The authority citation for Part 442 continues to read as follows:

Authority: 42 U.S.C. 1302.

2. The table of contents for Part 442 is amended by adding under Subpart C §§ 442.117, 442.118 and 442.119 to read as follows:

* * * * *

Subpart C—Certification of SNF's and ICF's

* * * * *

Sec.

442.117 Termination of certification for facilities whose deficiencies pose immediate jeopardy.

442.118 Denial of payment for new admissions.

442.119 Duration of denial of payments and subsequent termination.

* * * * *

3. In § 442.1(a), the numerical designations are removed, and the following new citation for section 1902(i) is added immediately after the citation for section 1902(a)(33)(B) of the Act: "Section 1902(i), circumstances and procedures for denial of payment and termination of provider agreements in certain cases;"

4. In § 442.2, the introductory phrase is reprinted, and definitions of "Immediate

jeopardy" and "New admission" are added, in alphabetical order, to read as follows:

§ 442.2 Terms.

In this part—

* * * * *

"Immediate jeopardy" for Medicaid certified SNFs, ICFs and ICFs/MR means a situation in which a facility's noncompliance with one or more conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) poses a serious threat to patients' health and safety such that immediate corrective action is necessary.

"New admission" means the admission of a Medicaid recipient who has never been in the facility or, if previously admitted, had been discharged or had voluntarily left the facility. The term does not include the following:

(1) Individuals who were in the facility before the effective date of denial of payment for new admissions, even if they become eligible for Medicaid after that date.

(2) If the approved State plan includes payments for reserved beds, individuals who, after a temporary absence from the facility, are readmitted to beds reserved for them in accordance with § 447.40(a) of this chapter.

4. New §§ 442.117, 442.118 and 442.119 are added to read as follows:

§ 442.117 Termination of certification for facilities whose deficiencies pose immediate jeopardy.

(a) A survey agency must terminate a facility's certification if it determines that—

(1) The facility no longer meets applicable conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) specified under Subpart D, E, F, or G of this part, and

(2) The facility's deficiencies pose immediate jeopardy to patients' health and safety.

(b) Subsequent to a certification of a facility's noncompliance, the Medicaid agency must, in terminating the provider agreement, follow the appeals process specified in Part 431, Subpart D of this chapter.

§ 442.118 Denial of payments for new admissions.

(a) *Basis for denial of payments.* The Medicaid agency may deny payment for new admissions to a SNF, ICF, or ICF/MR that no longer meets the applicable conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) specified under Subpart D, E, F, or G of this part if either of the following conditions is met:

(1) *Facility's deficiencies do not pose immediate jeopardy.* If the agency finds that the facility's deficiencies do not pose immediate jeopardy to patients health and safety, the agency may either terminate the facility's provider agreement or deny payment for new admissions.

(2) *Facility's deficiencies do pose immediate jeopardy.* If the agency finds that the facility's deficiencies do pose immediate jeopardy to patients' health and safety and thereby terminates the facility's provider agreement, the agency may additionally seek to impose the denial of payment sanction.

(b) *Agency procedures.* Before denying payments for new admissions, the Medicaid agency must comply with the following requirements:

(1) Provide the facility up to 60 days to correct the cited deficiencies and comply with the conditions (for SNFs) or the standards (for ICFs).

(2) If at the end of the specified period the facility has not achieved compliance, give the facility notice of intent to deny payment for new admissions, and opportunity for an informal hearing.

(3) If the facility requests a hearing, provide an informal hearing that includes—

(i) The opportunity for the facility to present, before a State Medicaid official who was not involved in making the initial determination, evidence or documentation, in writing or in person, to refute the decision that the facility is out of compliance with the applicable conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) for participation; and

(ii) A written decision setting forth the factual and legal bases pertinent to a resolution of the dispute.

(4) If the decision of the informal hearing is to deny payments for new admissions, provide the facility and the public, at least 15 days before the effective date of the sanction, with a notice that includes the effective date and the reasons for the denial of payments.

(c) *Effect of denial of Medicare payment.*—(1) *Period of denial.* If HCFA denies Medicare payments for new admissions to a SNF that also participates in Medicaid, the Medicaid agency must deny Medicaid payments for new admissions, effective for the same time period that Medicare payments are denied.

(2) *Informal hearing.* Only one informal hearing is available to a SNF that participates in both programs. It would be provided by HCFA in accordance with § 489.62(c) of this chapter.

§ 442.119 Duration of denial of payments and subsequent termination.

(a) *Period of denial.* The denial of payments for new admissions will continue for 11 months after the month it was imposed unless, before the end of that period, the Medicaid agency finds that—

(1) The facility has corrected the deficiencies or is making a good faith effort to achieve compliance with the conditions of participation (for SNFs) or the standards (for ICFs and ICFs/MR); or

(2) The deficiencies are such that it is necessary to terminate the facility's provider agreement.

(b) *Subsequent termination.* The Medicaid agency must terminate a facility's provider agreement—

(1) Upon the agency's finding that the facility has been unable to achieve compliance with the conditions of participation (for SNFs) or standards (for ICFs and ICFs/MR) during the period that payments for new admissions have been denied;

(2) Effective the day following the last day of the denial of payments period; and

(3) In accordance with the procedures for appeal of terminations set forth in Subpart D of Part 431 of this chapter.

D. Part 447 is amended as set forth below:

PART 447—PAYMENT FOR SERVICES

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise noted.

2. Section 447.40(a) is revised to clarify the intended meaning, to read as follows:

§ 447.40 Payments for reserving beds in institutions.

(a) The Medicaid agency may make payments to reserve a bed during a recipient's temporary absence from an inpatient facility, if—

(1) The State plan provides for such payments and specifies any limitations on the policy; and

(2) Absences for purposes other than required hospitalization (which cannot be anticipated and planned) are included in the patient's plan of care.

* * * * *

E. Part 489 is amended as set forth below:

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

1. The table of contents is amended to revise the titles of § 489.3 and Subpart E,

add a new § 489.54, redesignate § 489.50 as § 489.66, add a new Subpart F to include new §§ 489.60 through 489.64 and the redesignated § 489.66, and revise the authority citation, to read as follows:

Subpart A—General Provisions

* * * * *

Sec.
489.3 Definitions.
* * * * *

Subpart E—Termination of Agreement and Reinstatement After Termination

* * * * *

489.54 Termination by the OIG.
* * * * *

Subpart F—Denial of Payments to SNFs for New Admissions; Withholding of Payment

Sec.
489.60 Denial of payments for new admissions.
489.62 Procedures for denial of payments.
489.64 Duration of denial of payments and subsequent termination.
489.66 Withholding of payment for failure to make timely utilization review.

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

2. Section 489.1 is amended by revising the introductory paragraph to read as follows:

§ 489.1 Statutory basis.

This part implements section 1866 of the Social Security Act. Section 1866 specifies the terms of provider agreements, the grounds for terminating a provider agreement, the circumstances under which payment for new admissions may be denied, and the circumstances under which payment may be withheld for failure to make timely utilization review. The following other sections of that Act are also pertinent.

* * * * *

3. Section 489.2(a) is amended by adding at the end a sentence to describe the content of the new Subpart F, to read as follows:

§ 489.2 [Amended]

(a) * * *

Subpart F sets forth the circumstances and procedures for denial of payments for new admissions and for withholding of payment as an alternative to termination of a provider agreement.

* * * * *

4. Section 489.3 is amended by revising the title, adding an introductory phrase and adding in alphabetical order the definition of "immediate jeopardy" as follows:

§ 489.3 Definitions.

For purposes of this part—

"Immediate jeopardy" for Medicare SNFs means a situation in which a facility's noncompliance with one or more conditions of participation poses a serious threat to patents' health and safety such that immediate corrective action is necessary.

* * * * *

5. The title of Subpart E is revised to read as follows:

Subpart E—Termination of Agreement and Reinstatement After Termination

6. § 489.66 [Redesignated from § 489.50]

§ 489.50 is redesignated as § 489.66 under the new Subpart F.

7. Section 489.53 is revised and a new § 489.54 is added to clarify OIG and HCFA responsibilities for termination and notice of termination of provider agreements, to read as follows:

§ 489.53 Termination by HCFA.

(a) *Basis for termination of agreement with any provider.* HCFA may terminate the agreement with any provider if HCFA finds that any of the following failings is attributable to that provider:

(1) It is not complying with the provisions of title XVIII and the applicable regulations of this chapter or with the provisions of the agreement.

(2) It places restrictions on the persons it will accept for treatment and it fails either to exempt Medicare beneficiaries from those restrictions or to apply them to Medicare beneficiaries the same as to all other persons seeking care.

(3) It no longer meets the appropriate conditions of participation set forth elsewhere in this chapter.

(4) It fails to furnish information that HCFA finds necessary for a determination as to whether payments are or were due under Medicare and the amounts due.

(5) It refuses to permit examination of its fiscal or other records by, or on behalf of HCFA, as necessary for verification of information furnished as a basis for payment under Medicare.

(6) It failed to furnish information on business transactions as required in § 420.205 of this chapter.

(7) If failed at the time the agreement was entered into or renewed to disclose information on convicted individuals as required in § 420.204 of this chapter.

(8) It failed to furnish ownership information as required in § 420.206 of this chapter.

(9) It failed to comply with civil rights requirements set forth in 45 CFR Parts 80, 84, and 90.

(b) *Required termination of agreement with a SNF.* HCFA will terminate a SNF's provider agreement if it determines that—

(1) The SNF no longer meets a condition of participation specified in Part 405, Subpart K of this chapter; and

(2) The SNF's deficiencies pose immediate jeopardy to patients' health and safety.

(c) *Notice of termination.*—(1) *Timing: Basic rule.* Except as provided in paragraph (c)(2) of this section, HCFA will give the provider notice of termination at least 15 days before the effective date of termination of the provider agreement.

(2) *Exception.* For a SNF with deficiencies that pose immediate jeopardy to patients' health and safety, HCFA will give notice of termination at least 2 days before the effective date of termination of the provider agreement.

(3) *Content of notice.* The notice will state the reasons for, and the effective date of, the termination, and explain the extent to which services may continue after that date, in accordance with § 489.55.

(4) *Notice to public.* HCFA will concurrently give notice of the termination to the public.

(d) *Appeal by the provider.* A provider may appeal the termination of its provider agreement by HCFA in accordance with Subpart O of Part 405 of this chapter.

§ 489.54 Termination by the OIG.

(a) *Basis for termination.* (1) The OIG may terminate the agreement of any provider if the OIG finds that any of the following failings can be attributed to that provider.

(i) It has knowingly and willfully made, or caused to be made, any false statement or representation of a material fact for use in an application or request for payment under Medicare.

(ii) It has submitted, or caused to be submitted, requests for Medicare payment of amounts that substantially exceed the costs it incurred in furnishing the services for which payment is requested.

(iii) It has furnished services that the OIG has determined to be substantially in excess of the needs of individuals or of a quality that fails to meet professionally recognized standards of health care. The OIG will not terminate a provider agreement under paragraph (a) if HCFA has waived a disallowance with respect to the services in question on the grounds that the provider and the beneficiary could not reasonably be expected to know that payment would not be made. (The rules for determining

such lack of knowledge are set forth in §§ 405.330 through 405.334 of this chapter.)

(b) *Notice of termination.* The OIG will give the provider notice of termination at least 15 days before the effective date of termination of the agreement, and will concurrently give notice of termination to the public.

(c) *Appeal by the provider.* A provider may appeal a termination of its agreement by the OIG in accordance with Subpart O of Part 405 of this chapter.

(d) *Other applicable rules.* The termination of a provider agreement by the OIG is subject to the additional procedures specified in §§ 420.105 through 420.109 of this chapter for notice and appeals.

(8) Section 489.57 is revised to specify the entities responsible for reinstatement decisions to read as follows:

§ 489.57 Reinstatement after termination.

When a provider agreement has been terminated by HCFA under § 489.53, or by the OIG under § 489.54, a new agreement with that provider will not be accepted unless HCFA or the OIG, as appropriate, finds—

(a) That the reason for termination of the previous agreement has been removed and there is reasonable assurance that it will not recur; and

(b) That the provider has fulfilled, or has made satisfactory arrangements to fulfill, all of the statutory and regulatory responsibilities of its previous agreement.

9. A new Subpart F is added, to include new §§ 489.60 through 489.64 which read as follows, and redesignated § 489.66.

Supbart F—Denial of Payments to SNF's for New Admissions; Withholding of Payment

§ 489.60 Denial of payments for new admissions.

(a) *Basis for denial of payments.* HCFA may deny Medicare payments for new admissions to an SNF that no longer meets a condition of participation specified in Subpart K of Part 405 of this chapter, in either of the following circumstances:

(1) *Deficiencies do not pose immediate jeopardy.* If HCFA finds that the SNF's deficiencies do not pose immediate jeopardy to patient health and safety, HCFA may either terminate the SNF's provider agreement or deny payment for new admissions. In determining which sanction to impose, HCFA considers factors such as the facility's compliance history and the number and seriousness of the deficiencies.

(2) *Deficiencies do pose immediate jeopardy.* If HCFA finds that the SNF's deficiencies do pose immediate jeopardy to patient health and safety, and thereby terminates the SNF's provider agreement, HCFA will additionally seek to deny payment for new admissions.

(b) *Effect of Medicare denial on an SNF that also participates in Medicaid.* When HCFA denies payment for new admissions to an SNF that also participates in Medicaid, HCFA will require the Medicaid agency to deny Medicaid payments for new admissions for the same period that Medicare payments are denied.

§ 489.62 Procedures for denial of payments.

Before denying payments for new admissions, HCFA will fulfill the following requirements.

(a) Provide the facility up to 60 days to correct the cited deficiencies and achieve compliance with the SNF conditions of participation.

(b) If at the end of the specified period the facility has not achieved compliance, give the facility notice of intent to deny payment for new admissions, and opportunity for an informal hearing.

(c) If the facility requests a hearing, provide an informal hearing that includes—

(1) The opportunity for the facility to present, before an HCFA official who was not involved in making the initial determination, evidence and documentation, in writing or in person, to refute the decision that the facility is out of compliance with the conditions of participation of standards; and

(2) A written decision setting forth the factual and legal bases pertinent to a resolution of the dispute.

(d) If the decision of the informal hearing is to deny payments for new admissions, provide the facility and the public, at least 15 days before the effective date of the sanction, with a notice that includes the effective date and the reasons for the denial of payments.

§ 489.64 Duration of denial of payments and subsequent termination.

(a) *Period of denial.* The denial of payments will continue for 11 months after the month it was imposed unless, before the end of that period, HCFA finds that—

(1) The SNF has corrected the deficiencies or is making a good faith effort to achieve compliance with the conditions of participation; or

(2) The deficiencies are such that it is necessary to terminate the provider agreement.

(b) *Subsequent termination.* HCFA will terminate an SNF's provider agreement—

(1) Upon HCFA's finding that the SNF has been unable to achieve compliance with the conditions of participation during the period of denial of payments for new admissions;

(2) Effective the day following the last day of the denial of payments period; and

(3) In accordance with the procedures for terminations and reinstatements set forth in §§ 489.53 through 489.57.

§ 489.66 Withholding of payment for failure to make timely utilization review.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; and No. 13.773, Medicare—Hospital Insurance)

Dated: March 28, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration.

Approved: May 20, 1986.

Otis R. Bowen,

Secretary.

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Part V

Environmental Protection Agency

40 CFR Part 261

Regulatory Determination For Wastes From the Extraction and Beneficiation of Ores and Minerals

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL 3033-7]

Regulatory Determination for Wastes from the Extraction and Beneficiation of Ores and Minerals

AGENCY: Environmental Protection Agency.

ACTION: Regulatory determination.

SUMMARY: This is the regulatory determination for solid waste from the extraction and beneficiation of ores and minerals required by section 3001(b)(3)(C) of the Resource Conservation and Recovery Act (RCRA). This section of RCRA requires the Administrator to determine whether to promulgate regulations under Subtitle C of the Act for these wastes or determine that such regulations are unwarranted; the Administrator must make this determination no later than six months after completing a Report to Congress on these wastes and after public hearings and the opportunity to comment on the report. After completing these activities and reviewing the information available, the Agency has determined that regulation of the wastes studied in the Report to Congress, i.e., wastes from the extraction and beneficiation of ores and minerals, under Subtitle C is not warranted at this time.

ADDRESS: The address for the Headquarters docket is: United States Environmental Protection Agency, EPA RCRA docket (Sub-basement), 401 M street, SW., Washington DC, 20460, (202) 475–9327. For further details on what the EPA RCRA docket contains, see Section VII. of this preamble, titled "EPA RCRA Docket" under "**SUPPLEMENTARY INFORMATION.**".

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at (800) 424–9346 or (202) 382–3000 or Dan Derkics at (202) 382–2791.

SUPPLEMENTARY INFORMATION:

Preamble Outline

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VI. Application of Subtitle D to Mining Waste
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Supplementary Information

I. Summary

Based on the Report to Congress, comments on the report, and other available information, EPA has determined that regulation of mining waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA) is not warranted at this time.

This conclusion is based on EPA's belief that several aspects of EPA's current hazardous waste management standards are likely to be environmentally unnecessary, technically infeasible, or economically impractical when applied to mining waste. While under existing law EPA would have some flexiblity to modify its standards for hazardous waste management as applied to these wastes, there are substantial questions about whether the flexibility inherent in the statute coupled with the Agency's current data on these wastes provide a sufficient basis for EPA to develop a mining waste program under Subtitle C that addresses the risks presented by mining waste while remaining sensitive to the unique practical demands of mining operations. Given these uncertainties, EPA does not intend to impose Subtitle C controls on mining waste at this time.

The Agency, however, is concerned about certain actual and potential mining waste problems, and therefore plans to develop a program for mining waste under Subtitle D of RCRA. The long-term effectiveness of this program depends on available State resources for designing and implementing a program tailored to the needs of each State, and on EPA's ability to oversee and enforce the program. As noted below in section VI, EPA will be working with the States to determine the specific nature of their current mining waste activities and their future plans to administer such programs. The Administration will work with Congress to develop expanded Subtitle D authority (i.e., Federal oversight and enforcement) to support an effective State-implemented program for mining waste. EPA has already made preliminary contacts with Congress and intends to hold detailed discussions on the specifics of the Subtitle D program in the coming year. In the interim, EPA will use RCRA section 7003 and CERCLA sections 104 and 106 to protect against substantial threats and imminent hazards. If EPA is unable to develop an effective mining waste program under Subtitle D, the Agency may find it necessary to use Subtitle C authority in the future.

II. Background

Section 8002(f) of the Resource Conservation and Recovery Act of 1976 directed EPA to conduct:

> A detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources, and on the adequacy of means and measures currently employed by the mining industry, Government agencies, and others to dispose of and utilize such solid wastes to prevent or substantially mitigate such adverse effects.

The study was to include an analysis of:

1. The Sources and volume of discarded material generated per year from mining;
2. Present disposal practices;
3. Potential danger to human health and the environment from surface runoff of leachate and air pollution by dust;
4. Alternatives to current disposal methods;
5. The cost of those alternatives in terms of the impact on mine product costs; and
6. Potential for use of discarded material as a secondary source of the mine product.

On May 19, 1980, EPA promulgated regulations under Subtitle C of RCRA which covered, among other things, "solid waste from the extraction, beneficiation, and processing of ores and minerals," i.e., mining waste. On October 21, 1980, just before these Subtitle C regulations became effective, Congress enacted the Solid Waste Disposal Act of 1980 (Pub. L. 96–482) which added section 3001(b)(3)(A)(ii) to RCRA. This section prohibits EPA from regulating "solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore" as hazardous waste under Subtitle C of RCRA until at least six months after the Agency completes and submits to Congress the studies required by section 8002(f), and by section 8002(p) (which was also added to RCRA by the 1980 amendments).

Section 8002(p) required EPA to perform a comprehensive study on the disposal and utilization of the waste excluded from regulation, i.e., solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore. This new study, to be conducted in conjunction with the section 8002(f) study, mandated an analysis of:

1. The source and volumes of such materials generated per year;
2. Present disposal and utilization practices;

3. Potential danger, if any, to human health and the environment from the disposal and reuse of such materials;

4. Documented cases in which danger to human health or the environment has been proved;

5. Alternatives to current disposal methods;

6. The costs of such alternatives;

7. The impact of these alternatives on the use of phosphate rock and uranium ore, and other natural resources; and

8. The current and potential utilization of such materials.

The 1980 amendments also added section 3001(b)(3)(C), which requires the Administrator to make a "regulatory determination" regarding the waste excluded from Subtitle C regulation. Specifically within six months after submitting the Report to Congress, and after holding public hearings and taking public comment on the report, the Administrator must "determine to promulgate regulations" under Subtitle C of RCRA for mining waste or "determine that such regulations are unwarranted."

EPA was required to complete the study and submit it to Congress by October 16, 1983. In 1984, the Concerned Citizens of Adamstown and the Environmental Defense Fund sued EPA for failing to complete the section 8002 studies and the regulatory determination by the statutory deadlines. The District Court for the District of Columbia ordered EPA to complete the studies by December 31, 1985, and to publish the regulatory determination by June 30, 1986.

EPA submitted its Report to Congress on mining waste on December 31, 1985. A notice announcing the availability of the report, and the dates and locations of public hearings, was published January 8, 1986 (51 FR 777). EPA held public hearings on the report in Tucson, Arizona on March 6, 1986; Washington, DC on March 11, 1986; and Denver, Colorado on March 13, 1986. The comment period on the report closed March 31, 1986. This notice constitutes the Agency's regulatory determination for the wastes covered by the Report to Congress, i.e., wastes from the extraction and beneficiation of ores and minerals.

On October 2, 1986, EPA proposed to narrow the scope of the mining waste exclusion in RCRA section 3001(b)(3)(A)(ii), as it applies to processing wastes (50 FR 40292). Under this proposal, wastes that would no longer be covered by the mining waste exclusion would be subject to Subtitle C if they are hazardous. These "reinterpreted" wastes were not studied in the mining waste Report to Congress and therefore, are not covered by this regulatory determination.

III. Legal Authority

EPA has concluded that its decision whether to regulate mining waste under Subtitle C should be based not just on whether mining waste is hazardous (as currently defined by EPA regulations) but also should consider the other factors that section 8002 required EPA to study. The basis of this conclusion is the language of section 3001(b)(3)(A) which states that the regulatory determination must be "based on information developed or accumulated pursuant to [the section 8002 studies], public hearings, and comment. . . ." Clearly, Congress envisioned that the determination would be based on all the factors enumerated in sections 8002 (f) and (p). Congress already knew that some mining waste was hazardous, since the RCRA Subtitle C regulations which were promulgated on May 19, 1980 were to apply to hazardous (both characteristic and listed) mining waste. Congress apparently believed, however, that EPA should obtain and consider additional information, not just data on which types of mining waste are hazardous, before imposing Subtitle C regulation on these wastes. Accordingly, this regulatory determination is based on consideration of the factors listed in sections 8002 (f) and (p).

In reviewing the factors to be studied which are listed in sections 8002 (f) and (p), and the legislative history of these and other mining waste provisions, EPA has concluded that Congress believed that certain factors are particularly important to consider in making the Subtitle C regulatory determination. First, Congress instructed EPA to study the potential dangers to human health and the environment from mining waste, indicating that the decision to regulate under Subtitle C must be based on a finding of such a danger. Second, section 8002(p) required EPA to review the actions of other Federal and State agencies which deal with mining waste "with a view toward avoiding duplication of effort." From this provision, EPA concludes that Congress believed Subtitle C regulation might not be necessary if other Federal or State programs control any risks associated with mining waste. Third, Congress expected EPA to analyze fully the disposal practices of the mining industry which, when read in conjunction with the legislative history of this provision, indicates concern about the feasibility of Subtitle C controls for mining waste. Finally, Congress instructed EPA to look at the costs of various alternative methods for mining waste management, as well as the impact of those alternatives on the use of natural resources. Therefore, EPA must consider both the cost and impact of any Subtitle C regulations in deciding whether they are warranted. Clearly, Congress believed that it was important to maintain a viable mining industry. Therefore, any Subtitle C regulations which would cause widespread closures in the industry would be unwarranted.

IV. Report to Congress

EPA's Report to Congress provides information on sources and volumes of waste, disposal and utilization practices, potential danger to human health and the environment from mining practices, and evidence of damages. EPA received more than 60 written comments on the report and heard testimony at the hearings from more than 30 individuals. A complete summary of all the comments presented at the hearings and submitted in writing is available (ICF, 1986a see VII No. 6); (see "EPA RCRA Docket"). This section summarizes the information contained in the Report to Congress, public comments received on the report, and EPA's response to the comments.

A. Summary of Report to Congress

1. Structure and Location of Mines

EPA focused on segments producing and concentrating metallic ores, phosphate rock, and asbestos, totalling fewer than 500 active sites during 1985. These sites, which are predominantly located in sparsely populated areas west of the Mississippi River, vary widely in terms of size, product value, and volumes of material handled. Several segments are concentrated primarily in one state: The iron segment is mainly concentrated in Minnesota, lead in Missouri, copper in Arizona, asbestos in California, and phosphate in Florida.

2. Waste Quantities

The Report to Congress estimated that 1.3 and 2 billion metric tons per year of nonfuel mining waste were generated in 1982 and 1980, respectively. The accumulated waste volume since 1910 from nonfuel mining is estimated to be approximately 50 billion metric tons. The large volume of annual and accumulated nonfuel mining waste results from the high waste-to-product ratios associated with mining. The fact that most of the material handled in mining is waste and not marketable product distinguishes mining from many other process industries where waste materials make up a relatively small portion of the materials used to produce

a final product. Consequently, some of the larger mining operations handle more material and generate more waste than many entire industries.

3. Waste Management Practices

The report indicated that site selection for mines, as well as associated beneficiation and waste disposal facilities, is the single most important factor affecting environmental quality in the mining industry. Most mine waste is disposed of in piles, and most tailings in impoundments. Mine water is often recycled through the mill and used for other purposes onsite. Off-site utilization of mine waste and mill tailings is limited (i.e., 2 to 4 percent of all mining waste generated). Some waste management measures (e.g., source separation, treatment of acids or cyanides, and waste stabilization) now used at some facilities within a narrow segment of the mining industry could be more widely used. Other measures applied to hazardous waste in nonmining industries may not be appropriate. For example, soil cover from surrounding terrain may create additional reclamation problems in arid regions.

4. Potential Hazard Characteristics

Of the 1.3 billion metric tons of nonfuel mining waste generated by extraction and beneficiation in 1985, about 61 million metric tons (5 percent) exhibit the characteristics of corrosivity and/or EP (Extraction Procedure) toxicity, as defined by 40 CFR 261.22 and 261.24, respectively. Another 23 million metric tons (2 percent) are contaminated with cyanide (greater than 10 mg/1). Further, there are 182 million metric tons (14 percent) of copper leach dump material and 95 million metric tons (7 percent) of copper mill tailings with the potential for release of acidic and toxic liquid, i.e., acid formation. There are 443 million metric tons (34 percent) of waste from the phosphate and uranium segments with radioactivity content greater than 5 picocuries per gram; a total of 93 million metric tons (7 percent) has radioactivity content greater than 20 picocuries per gram. Finally, asbestos mines generated about 5 million metric tons (less than 1 percent) of waste with a chrysotile content greater than 5 percent.

5. Evidence of Damages

To determine what damage might be caused by mining waste, EPA conducted ground-water monitoring and examined documented damage cases. During short-term monitoring studies at eight sites, EPA detected seepage from tailings impoundments, a copper leach dump, and a uranium mine water pond. The EP toxic metals of concern, however, did not appear to have migrated during the 6- to 9-month monitoring period. Other ground-water monitoring studies, however, detected sulfates, cyanides, and other contaminants from mine runoff, tailings pond seepage, and leaching operations. The actual human health and environmental threat posed by any of these releases is largely dependent upon site-specific factors, including a site's proximity to human populations or sensitive ecosystems. Sites well removed from population centers, drinking water supplies, and surface waters are not likely to pose high risks.

Incidents of damage (e.g., contamination of drinking water aquifers, degradation of aquatic ecosystems, fish kills, and related degradation of environmental quality) have also been documented in the phosphate, gold, silver, copper, lead, and uranium segments. As of September 1985, there were 39 extraction, beneficiation, and processing sites included or proposed for inclusion on the National Priorities List under CERCLA (Superfund), including five gold/siver, three copper, three asbestos, and two lead/zinc mines. The asbestos Superfund sites differ from other sites in that these wastes pose a hazard via airborne exposure.

6. Potential Costs of Regulation

The Report to Congress presented for five metal mining segments, total annualized costs ranging from $7 million per year (for a scenario that emphasizes primarily basic maintenance and monitoring for wastes that are hazardous under the current RCRA criteria) to over $800 million per year (for an unlikely scenario that approximates a full RCRA Subtitle C regulatory approach, emphasizing cap and liner containment for all wastes considered hazardous under the current criteria, plus cyanide and acid formation wastes). About 60 percent of the total projected annualized cost at active facilities can be attributed to the management of waste accumulated from past production. Those segments with no hazardous waste (e.g., iron) would incur no costs. Within a segment, incremental costs would vary greatly from facility to facility, depending on current requirements of state laws, ore grade, geography, past waste accumulation, percentage of waste which is hazardous, and other factors.

B. Comments Received on the Report to Congress and EPA's Response

1. Potential Hazard Characteristics

EPA received several comments addressing the magnitude of the wastes generated by the mining industry, and the amount that is hazardous. Many agreed with the report's conclusion that there are substantial volumes of waste, but questioned EPA's estimates of the amount of "hazardous" waste.

Many commenters noted that they believed the EP (Extraction Procedure) test is inappropriate for mining waste because the municipal landfill mismangement scenario on which the test is based is not relevant to mining waste. They further noted that the corrosivity characteristic is not appropriate because it does not address the buffering capacity of the environment at certain mining sites. Finally, several commenters noted that leaching operations are processes, rather than wastes and are thus outside the purview of RCRA.

The Agency agrees that dump and heap leach piles are not wastes; rather they are raw materials used in the production process. Similarly, the leach liquor that is captured and processed to recover metal values is a product, and not a waste. Only the leach liquor which escapes from the production process and abandoned heap and dump leach piles are wastes. Since the report identified 50 million metric tons of heap and dump leach materials as RCRA corrosive wastes, EPA has accordingly reduced its estimate of mining waste volumes which meet the current definition of hazardous waste. The Agency currently estimates that out of the 61 million metric tons per year of mining waste identified as hazardous in the Report to Congress, only 11 million metric tons of mining waste generated annually are hazardous because they exhibit EP toxicity, and an unknown amount of escaped leach liquor is corrosive. EPA has also concluded that potential problems from substantial quantities of mining waste which have other properties, i.e., radioactivity, asbestos, cyanide, or acid generation potential will not be identified by the current RCRA characteristics. EPA, therefore, believes that entirely different criteria may more appropriately identify the mining wastes most likely to be of concern.

2. Evidence of Damages

EPA received many comments on whether the Report to Congress demonstrates that mining waste pose a threat to human health and the

environment. Many commenters alleged that the report does not demonstrate conclusively that such wastes do pose a threat. They claimed that EPA did not adequately consider the site-specific nature of mining waste management problems. They pointed out that the environmental settings of sites vary widely, as do management practices, and that all these factors influence risk. Also, several commenters noted that the report fails to distinguish between the threat from past practices and the threat, if any, from current practices. Based on these observations, many of these commenters urged EPA to postpone regulations pending additional analysis. However, other commenters noted that they believed there is sufficient evidence that mining waste poses a threat to human health and the environment and asked for immediate regulatory action, noting that the time for study was over.

The Agency agrees that adverse effects to the public and the environment from the disposal of mining waste is not likely at sites well-removed from population centers, drinking water supplies, surface water, or other receptors. However, for other sites, analyses of contaminant plumes released by leaching operations and releases of other contaminants (e.g., acids, metals, dusts, radioactivity) demonstrate adverse effects. Moreover, the Agency recognizes, as evidenced by the mining waste sites on the National Priorities List, the potential for problems from mining sites. It is apparent that some of the problems at Superfund or other abandoned sites are attributable to waste disposal practices not currently used by the mining industry. However, it is not clear from the analysis of damage cases and Superfund sites, whether current waste management practices can prevent damage from seepage or sudden releases. EPA is concerned that a large exposure potential exists at some sites generating mining waste, particularly the sites that are close to population centers or in locations conducive to high exposure and risk to human health and the environment.

3. Potential Costs of Regulation

EPA received a large number of comments pertaining to the cost of complying with regulations for mining waste, and the effects these compliance costs would have on the mining industry. Many commenters claimed that regulating the mining industry would impose costs much greater than those EPA estimated in its Report to Congress. They also noted that the mining industry was depressed, and that for many mines, increased compliance costs would be greater than the profits, leading to forced closures.

Many commenters also pointed out that there are current Federal and State regulations which already apply to mining, which impose costs. They noted that EPA needs to review the existing Federal and State regulatory structure before adding to it, thereby imposing additional costs. Others did not agree, commenting that existing Federal and State regulations are inadequate, and that additional EPA regulation is necessary.

EPA is sensitive to the potential costs to the industry associated with mining waste regulations under Subtitle C. The Agency is also cognizant that many EPA programs already affect the mining industry such as the Clean Water Act which, among other things, control surface water discharge via national Pollutant Discharge Elimination system (NPDES) permits. Other Federal agencies, including the Bureau of Land Management, the Forest Service, and the National Park Service, also exercise oversight and impose regulatory controls (CRA, 1986b see VII no. 3). The Federal waste disposal requirements generally call for practices that will prevent unnecessary and undue degradation. Federal reclamation guidelines are somewhat more detailed, requiring approval of a land management operating plan and an environmental assessment. Also these agencies generally require compliance with all applicable state and local laws and ordinances.

A number of states have their own statutes and implementing regulations for mining waste. Some states have comprehensive and well-integrated programs; other States have newer, partially developed programs (CRA, 1986c see VII no. 4). Although there is great variation in programs, many states have siting and permitting requirements, and require financial assurance, groundwater and surface water protection, and closure standards. EPA agrees that any requirements necessary to protect human health and the environment should consider the existing Federal and State mining waste programs with a view toward avoiding duplication of effort.

C. Mining Waste Conclusions

Based on the available information and public comments, the Agency draws the following conclusions about mining wastes. (BAI, 1986 see VII No. 1)

Source and Volume

• The waste volume generated by mining and beneficiation is considerably larger than the volume of waste generated by other industries currently subject to hazardous waste controls. The mining industry alone generates over one billion metric tons of waste per year compared to 260 million metric tons generated annually by all other hazardous waste industries. The average mining waste facility manages about three million metric tons of waste annually while the typical facility subject to Subtitle C controls manages about 50 thousand metric tons of waste per year.

• In general, mining waste disposal facilities are considerably larger than industrial hazardous waste disposal facilities; most of the largest industrial hazardous waste land disposal facilities are (tens of acres) in size, while typical mining waste disposal facilities are (hundreds of acres) in size. Agency studies indicate that mining waste tailings impoundments average about 500 acres; the largest is over 5000 acres. Mining waste piles average 126 acres; the largest exceeds 500 acres. Hazardous waste impoundments, however, average only about 6 acres and hazardous waste landfills average only about 10 acres. Consequently, EPA believes that many traditional hazardous waste controls may be technically infeasible or economically impractical to implement at mining waste sites because of their size.

Waste Management Practices

• EPA estimates indicate that most hazardous waste generators (about 70 percent) ship all of their waste off-site, however, no mines ship all of their waste off-site. In addition, nearly all mining waste is land disposed, while less than half of all industrial hazardous waste is land disposed.

Evidence of Damage

• In general, environmental conditions and exposure potential associated with mining waste are different than those associated with industrial hazardous waste streams. Agency studies suggest that mining waste streams generally have lower exposure and risk potential for several reasons.

—First, mining waste management facilities are generally in drier climates than hazardous waste management facilities, thereby reducing the leaching potential. Over 80 percent of the mining sites are located west of the Mississippi River, which generally has drier climates, whereas industrial hazardous waste landfills are more evenly distributed nationally. In addition, the Agency estimates that more than sixty percent

of all mines have annual net recharge between 0–2 inches, and only ten percent have net recharge greater than ten inches. However, about 80 percent of the hazardous waste land disposal facilities have net recharge greater than five inches, and over one-third exceed 15 inches.

—Second, EPA studies indicate that hazardous waste land disposal facilities are closer to ground water than mining waste sites. Over 70 percent of hazardous waste sites have a depth to ground water of 30 feet or less, while about 70 percent of mining sites have ground water depths greater than 30 feet.

—Third, Subtitle C facilities tend to be located in more densely populated areas. EPA estimates that mining waste sites have average populations of less than 200 within one mile of the site, while hazardous waste sites average over 2,000 people at the same distance. Within five miles of the mining waste sites, the average population is almost 3,000, while hazardous waste sites average nearly 60,000 people.

—Fourth, Agency studies suggest that, compared to mining waste sites, hazardous waste sites tend to be located closer to drinking water receptors and serve larger populations. Almost 70 percent of the hazardous waste sites are located within five miles of a drinking water receptor serving an average population of over 18,000 and as many as 400,000 people. Almost half as many mining sites are located within this same distance, and they serve considerably smaller populations (averaging 3,000 but ranging as high as 20,000.)

• Although the Agency believes that the human exposure and risk potential appears to be lower for mining waste sites than for industrial hazardous waste sites, many mines are located in sensitive environmental settings. EPA estimates that about 50 percent of the mines are located in areas that have resident populations of threatened or endangered species or species of other special concern, (often the case for industrial sites). In addition, mining sites are typically located in relatively remote and otherwise undisturbed natural environments.

Cost and Economic Impacts

• EPA believes that many traditional waste management controls designed principally for industrial hazardous waste management facilities may be economically impractical to implement at mining sites and could impose substantial costs to the industry resulting in potential mine closures. Full Subtitle C controls for mining sites could impose as much as $850 million per year in compliance costs. Such costs could be greater than profits resulting in mine closures.

• Many Federal and State agencies already have regulatory programs for managing mining waste. New hazardous waste controls for mining waste could be difficult to integrate with existing Federal and State programs.

V. Application of Subtitle C to Mining Waste

EPA believes that it needs maximum flexibility to develop an appropriate program for mining waste which addresses the technical feasibility, the environmental necessity, and the economic practicality of mining waste controls. The program should consist of a tailored risk-based approach which addresses the diversity and unique characteristics of mining waste problems.

The current Subtitle C program is designed principally for controlling problems created by industrial wastes. Based on information available, the Agency believes that many controls required under the current Subtitle C program, if applied universally to mining sites, would be either unnecessary to protect human health and the environment, technically infeasible, or economically impractical to implement. For instance, certain Subtitle C requirements such as single and double liner system requirements which provide liquid management, and closure and capping standards to minimize infiltration, may be technically infeasible or economically impractical to implement for mining wastes because of the quantity and nature of waste involved. In addition, for many mining sites located in remote areas, such controls may be necessary to protect human health and the environment. For example, liquid releases to the ground water can be minimized and controlled using cutoff walls or interceptor wells (i.e., controlled release) as well as through liner systems, and alternate capping requirements designed to address site-specific concerns such as direct human contact or wind erosion, are likely to be feasible and practical, thus providing better long-term protection of human health and the environment.

Section 3004(x) of RCRA does provide flexibility for regulating mining waste. This section gives EPA the authority to modify certain Subtitle C requirements for mining waste which were imposed by the Hazardous and Solid Waste Amendments of 1984 (HSWA) which relate to liquids in landfills, prohibitions on land disposal, minimum technological requirements, continuing releases at permitted facilities, and retrofitting interim status surface impoundments with liners. In modifying these requirements, EPA may consider site-specific characteristics as well as the practical difficulties associated with implementing such requirements. In addition, EPA has general authority under RCRA section 3004(a) to modify remaining Subtitle C requirements, such as administrative standards, financial requirements, and closure and capping requirements, if a waste poses different risks or the existing standards are technically infeasible. However, in modifying such requirements, section 3004(a) does not provide EPA the same degree of flexibility to consider the economic impact of regulation that is found in section 3004(x).

As described earlier in this notice, EPA believes that the decision whether to regulate mining waste under Subtitle C must consider the factors listed in RCRA sections 8002 (f) and (p), including the risks associated with mining waste, the cost of such regulation, and the effect regulation might have on the use of natural resources. EPA has concluded that in order to meet that objective, it would want to develop a program that has maximum flexibility to develop an effective control strategy for individual facilities based on site-specific conditions. The existing Subtitle C regulatory program would probably have to be changed substantially for mining waste to provide that type of flexibility.

Given these general conclusions about what would be needed to make the Subtitle C system appropriate for mining waste, there are substantial uncertainties about whether that program is the right mechanism to address mining waste. First, it is unclear whether the legal authorities under which EPA would be acting (*i.e.*, sections 3004(a) and 3004(x)) give EPA sufficient flexibility to craft a program for "hazardous" mining waste given the statutory and regulatory approach established for other hazardous wastes. Second, and closely related, there are substantial questions about whether the Agency's current data on mining waste management provide a basis for substantial modifications to the existing Subtitle C regulatory program. With the mining waste study and the supplementary information collection efforts associated with today's notice, EPA has greatly expanded its understanding of mining waste

management practices. At the same time, additional data collection and analysis would probably be necessary to support specific modifications of multiple provisions in the existing hazardous waste regulations before those regulations would provide the type of flexibility we currently believe might be necessary. These uncertainties have led us to the conclusion that Subtitle C does not provide an appropriate template for a mining waste management program.

VI. Application of Subtitle D to Mining Waste

Solid waste that is not hazardous waste is subject to regulation under Subtitle D. Therefore, mining waste, which is included in the RCRA definition of solid waste, is currently covered by Subtitle D. EPA believes that it can design and implement a program specific to mining waste under Subtitle D that addresses the risks associated with such waste. The current Subtitle D program establishes criteria which are, for the most part, environmental performance standards that are used by States to identify unacceptable solid waste disposal practices or facilities. (See 40 CFR Part 257.) These criteria include, among other things, standards related to surface water discharges, ground-water contamination, and endangered species. Because the program's criteria are aimed principally at municipal and industrial solid waste, EPA believes they do not now fully address mining waste concerns. In addition, many of these criteria, such as control of disease vectors and bird hazards, are not appropriate for mining waste.

The Agency is currently revising these criteria for facilities that may receive hazardous household waste and small quantity generator hazardous waste; these revisions will not apply to mining waste which are generally not codisposed with such wastes. However, the Agency intends to further augment the Subtitle D program by developing appropriate standards and taking other actions appropriate for mining waste problems. EPA will focus on identifying environmental problems and setting priorities for applying controls at mining sites with such potential problems as high acid-generation potential, radioactivity, asbestos and cyanide wastes. EPA will also develop a risk-management framework to develop appropriate standards as necessary to protect human health and the environment. EPA will consider requirements such as: (1) A range of closure options to accommodate variable problems such as infiltration to ground water and exposure from fugitive dust; (2) options to define tailored controls, including those established by the Clean Water Act, to address problems from runoff to surface water; (3) options for liquid management controls such as pretreatment of wastes prior to disposal, controlled release, or liner systems; (4) ground-water monitoring options that accommodate site-specific variability; and (5) a range of clean-up options.

In developing such a program, EPA will use its RCRA Section 3007 authority to collect additional information on the nature of mining waste, mining waste management practices, and mining waste exposure potential. EPA believes this authority does not limit information collection to "hazardous" waste identified under Subtitle C but also authorizes the collection of information on any solid waste that the Agency reasonably believes may pose a hazard when improperly managed. (EPA may also use this authority in preparing enforcement actions.) Initially, EPA will use this information to develop a program under Subtitle D. The information, however, may indicate the need to reconsider Subtitle C for certain mining wastes.

In specifying the appropriate standards, EPA also will further analyze existing Federal and State authorities and programs and determine future plans for administering their mining waste programs. Additionally, EPA will perform analyses of costs, impacts, and benefits and will comply fully with Executive Orders 12291 and 12498, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

EPA is concerned that the lack of Federal oversight and enforcement authority over mining waste controls under Subtitle D of RCRA and inadequate State resources to develop and implement mining waste programs may jeopardize the effectiveness of the program. The Administration therefore will work with Congress to develop the necessary authority. In the interim, EPA will use section 7003 of RCRA and sections 104 and 106 of CERCLA to seek relief in those cases where wastes from mining sites pose substantial threats or imminent hazards to human health and the environment. Mining waste problems can also be addressed under RCRA Section 7002 which authorizes citizen lawsuits for violations of Subtitle D requirements in 40 CFR Part 257.

As EPA develops this program for regulating human health and environmental risks associated with mining waste, the Agency may find that the Subtitle D approach is unworkable, perhaps because there is insufficient authority to implement an effective program (i.e., the Agency does not obtain oversight and enforcement authority under Subtitle D), or that States lack adequate resources to develop and implement the program. In such an event, EPA may find it necessary to reexamine use of Subtitle C authority with modified mining waste standards in the future.

EPA has already made preliminary contacts with Congress to discuss the best approach for an effective mining waste program. The Agency intends to immediately begin collecting additional technical, economic, and other relevant information needed for program development, and to complete its data analysis by late 1987. EPA hopes to propose revisions to the Subtitle D criteria that are specific to mining waste by mid-1988.

VII. EPA RCRA Docket

The EPA RCRA docket is located at:
United States Environmental Protection Agency,
EPA RCRA Docket (Sub-basement),
401 M Street, SW.,
Washington, DC 20460.

The docket is open from 9:30 to 3:30 Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments.

Copies of the following documents are available for *viewing only* in the EPA docket room:

1. Buc & Associates Inc., 1986. Location of Mines and Factors Affecting Exposure.
2. Charles River Associates, 1986a. Estimated Costs to the U.S. Uranium and Phosphate Mining Industry for Management of Radioactive Solid Wastes.
3. Charles River Associates, 1986b. Federal Non-EPA Regulations Addressing Mining Waste Practices.

4. Charles River Associates, 1986c. State Regulations of the U.S. Mining Industry.
5. Frontier Technical Associates, 1986a. Groundwater Monitoring Data on Ore Mining and Milling Solid Waste Disposal.
6. ICF, 1986a. Summary of Comments on the Report to Congress.
7. ICF, 1986b. Overview of Superfund Mine Sites.
8. Meridian 1986. Statistical Analysis of Mining Waste Data.
9. Versar, 1986a. Quantities of Cyanide-bearing and Acid-Generating Wastes.
10. Versar, 1986b. Technical Studies Supporting the Mining Waste Regulatory Determination.

The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20/page.

Dated: June 30, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-15168 Filed 7-2-86; 8:45 am]

BILLING CODE 6560-50-M

federal register

Thursday
July 3, 1986

Part VI

Environmental Protection Agency

Hazardous Waste: State Authorization To Regulate Hazardous Components of Radioactive Mixed Wastes; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3041-3]

State Authorization To Regulate the Hazardous Components of Radioactive Mixed Wastes Under the Resource Conservation and Recovery Act

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is today publishing a notice that in order to obtain and maintain authorization to administer and enforce a hazardous waste program pursuant to Subtitle C of the Resource Conservation and Recovery Act (RCRA), States must have authority to regulate the hazardous components of "radioactive mixed wastes". "Radioactive mixed wastes" are wastes that contain hazardous wastes subject to RCRA and radioactive wastes subject to the Atomic Energy Act (AEA).

DATE: States which have received EPA authorization prior to the publicity date of this Notice must, within one year of the publication date of this notice (two years if a State statutory amendment is required) (i.e., by July 3, 1987 and July 5, 1988), demonstrate authority to regulate the hazardous components of radioactive mixed wastes. States initially applying for final authorization after July 3, 1987 must incorporate this provision in their application for final authorization.

FOR FURTHER INFORMATION CONTACT: Denise Hawkins, Office of Solid Waste (WH-563-B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2210.

SUPPLEMENTARY INFORMATION:

A. Authorization of State Hazardous Waste Programs

Section 3006(b) of RCRA provides that States may apply to EPA for authorization to administer and enforce a hazardous waste program pursuant to Subtitle C of RCRA. Authorized State programs are carried out in lieu of the Federal program. However, EPA is authorized to implement the Hazardous and Solid Waste Amendments to RCRA (HSWA) (Pub. L. 98-616) in authorized States until those States revise their programs to incorporate the HSWA requirements and receive EPA authorization to implement HSWA. Requirements for obtaining authorization are set forth in 40 CFR Part 271. To date, 41 States have received final authorization (not including HSWA).

B. Regulation of Radioactive Wastes

Section 1004(27) of RCRA excludes from the definition of "solid waste", "source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended (AEA) (68 Stat. 923)." Since "hazardous waste" is defined by section 1004(5) as a subset of "solid waste", "source, special nuclear and byproduct material" are exempt from the definition of hazardous waste and thus from the Subtitle C program.

While source, special nuclear and byproduct material are clearly exempt from RCRA, the extent of the statute's applicability to wastes containing both hazardous waste and source, special nuclear or byproduct material has been les evident. The question of which wastes are encompassed by the term "byproduct material" has also been the subject of some controversy. We note that the definition of byproduct material is currently the subject of rulemaking by the Department of Energy (DOE). (50 FR 45736, November 1, 1985).

Given the lack of clarity on this issue, EPA did not previously require as a condition of State authorization that the State have regulatory authority over the hazardous components of radioactive mixed wastes. In authorizing States, EPA did not inquire into State authority over the hazardous components of radioactive mixed wastes and made no determination of whether States had authority over such wastes. Accordingly, the Agency has taken the position that currently authorized State programs do *not* apply to radioactive mixed wastes.

Thus, radioactive mixed wastes are not currently subject to Subtitle C regulations in authorized States.[1] EPA has now determined that wastes containing both hazardous waste and radioactive waste are subject to the RCRA regulation.

Today, we are hereby publishing notice that, pursuant to 40 CFR 271.9 (which requires State programs to regulate all wastes controlled under 40 CFR Part 261), radioactive mixed wastes are to be part of authorized State programs. States that already have authorized programs must revise their programs (if necessary) and must apply for authorization for hazardous components of radioactive mixed wastes. States must demonstrate to the appropriate EPA Regional Administrator that their program applies to all hazardous waste even if mixed with radioactive waste. This demonstration must be made within one year of the publication date of this notice.[2] States

[1] The exception to this is in the use of EPA's HSWA authorities in authorized States. EPA can use its HSWA authorities to supplement an authorized State's authority over RCRA-regulated units. Under § 3004(u), EPA can jointly issue a permit with the State and impose corrective action requirements on hazardous waste management units and solid waste management units (swmu's) at facilities that contain units subject to RCRA. Although hazardous components of radioactive mixed wastes are not RCRA-regulated under authorized State RCRA programs, radioactive mixed waste will be considered to be a "solid waste" for purposes of corrective action at solid waste management units. The Federal definition of "solid waste" is to be used in determining what units are swmu's, because State definitions were not scrutinized. Therefore, in order to obtain authorization for corrective action, States must obtain authorization for their definition of solid waste, which may not exclude hazardous components of radioactive mixed wastes. Because radioactive mixed waste is considered a solid waste under the Federal RCRA program, units containing radioactive mixed wastes are swmu's and are subject to corrective action *if* there is another unit requiring a RCRA permit at the facility. RCRA enforcement activities also apply.

[2] EPA is not promulgating a regulation today. However, in light of the Agency's previous policy, we believe it is appropriate to provide the time allowed by 40 CFR 271.21(e)(2) for State program modifications to conform to regulatory changes. Note that EPA has proposed to amend 40 CFR 271.21 to allow States until July 1 of each year to incorporate changes to the Federal program that occurred in the preceding 12 months. Where statutory changes are necessary, an additional year would be allowed (51 FR 496-504, January 6, 1986). EPA will allow States to use this "clustering" approach for radioactive mixed wastes if and when the revisions to § 271.21 are finally promulgated.

initially applying for final authorization one year after the publication date of this notice must make this demonstration in their initial application.

In most cases, this will require only an interpretive statement by the State Attorney General, since most States have the same exception to the definition of "solid waste" as that contained in section 1004(27) of RCRA. Some States, however, may require statutory amendments in order to regulate the hazardous components of radioactive mixed wastes. Such States, if already authorized, must revise their programs within two years of the publication date of this notice. States initially applying that need a statutory amendment will have to obtain the amendment before submitting an application for final authorization.

In order to demonstrate regulation of the hazardous components of radioactive mixed wastes, States should submit to the appropriate Regional Administrator a copy of all applicable statutory and regulatory provisions, plus a statement by the State Attorney General to the effect that the State's hazardous waste program applies to wastes containing both hazardous waste and radioactive waste as defined by the AEA. If an agency other than the authorized hazardous waste agency will implement the radioactive mixed wastes program, the authorization application must include a description of the agency's functions (see 40 CFR 271.6(b)) and a Memorandum of Understanding between that agency and the authorized hazardous waste agency, describing the roles and responsibilities of each.

The DOE has proposed an interpretive definition of the term "byproduct material" (50 FR 45736, November 1, 1985), and is now evaluating public comment. Pending clarification of this issue, this matter will be addressed on a case-by-case basis.

We also note that section 1006 of RCRA precludes any regulation by EPA or a State which is inconsistent with the requirements of the Atomic Energy Act. EPA and the State may, therefore, on a case-by-case basis use the authority of § 1006 to modify hazardous waste requirements to address radioactive mixed wastes activities, pending issuance of EPA's regulation which will set forth procedures for addressing the inconsistency issue. In addition, EPA, the Nuclear Regulatory Commission (NRC), and DOE will be working together to develop guidance.

Notwithstanding any other provision of law, all requirements of the AEA and all Executive Orders concerning the handling of restricted data and national security information, including "need-to-know" requirements, shall be applicable to any grant of access to classified information under the provisions of RCRA.

Dated: June 30, 1986

J. Winston Porter,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 86-15250 Filed 7-2-86; 12:16 pm

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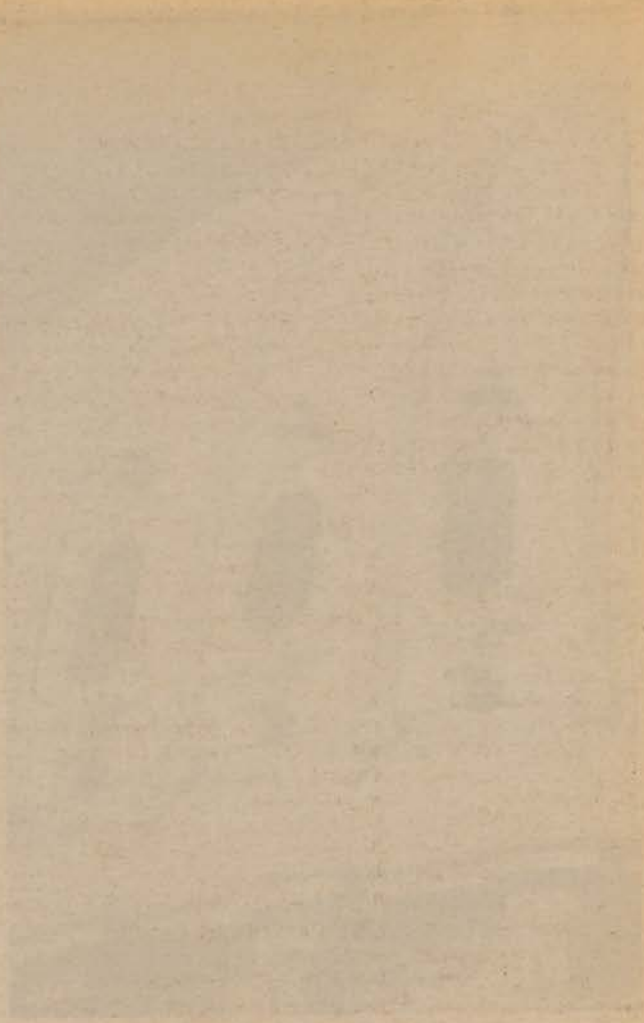
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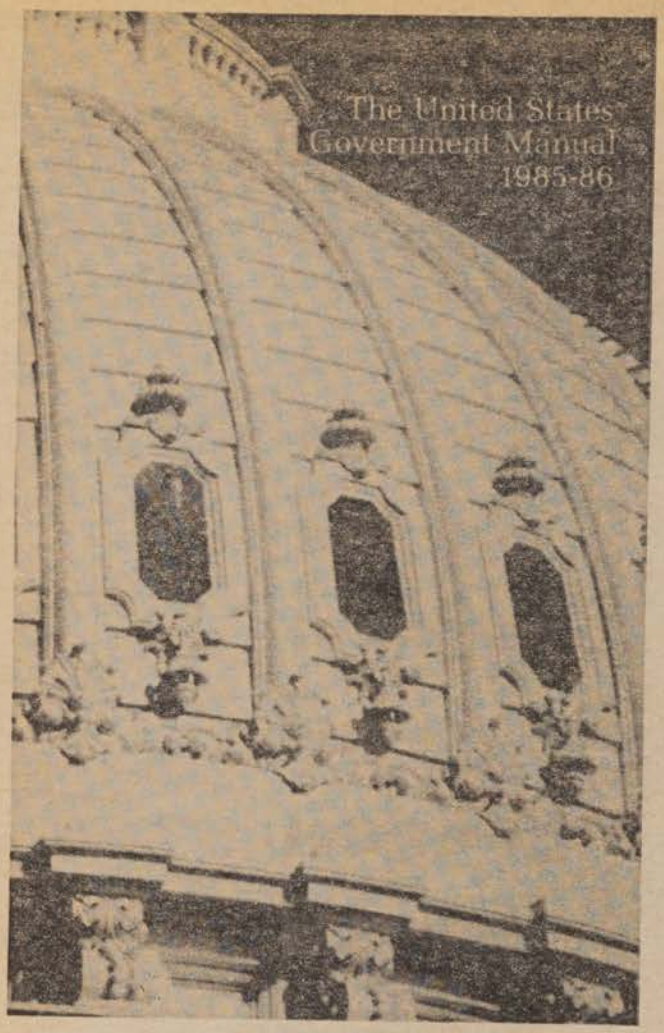
S. 1106/Pub. L. 99-346

Saginaw Chippewa Indian Tribe of Michigan Distribution of Judgment Funds Act. (June 30, 1986; 100 Stat. 674; 6 pages) Price: $1.00

S.J. Res. 346/Pub. L. 99-347

To designate June 21, 1986, as "National Save American Industry and Jobs Day." (June 30, 1986; 100 Stat. 680; 2 pages) Price: $1.00





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