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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on three amendments to rules and regulations which will: Allow handlers of organic lemons to ship 250 cartons per week of such lemons without regard to volume and size regulations under the order; permit the optional use of upward adjustments by handlers in Districts 1 and 3 up to 100 percent of their average weekly picks; and provide that District 2 handlers whose picks are interrupted for four or more successive weeks (rather than eight or more successive weeks as previously provided in the regulations) may apply for a new prorate base. This rule will also invite comments on making these amendments effective for subsequent crop years. These actions provide lemon handlers with additional flexibilities to enable them to market their lemons more advantageously.

EFFECTIVE DATE: Effective August 1, 1986, through July 31, 1987. Comments due by September 4, 1986.

ADDRESS: Interested persons are invited to submit written comments concerning this action. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

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

SUPPLEMENTARY INFORMATION: This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

Section 910.180(d) of the rules and regulations established under the order prescribes procedures governing the exemption from order regulations of lemons handled in minimum quantities and certain types of shipments. This action would allow the handling of organic lemons without regard to volume and size requirements that may be issued under the order if certain safeguards are met. Under the amendment, each handler of organic lemons would be required to apply to the committee for exemption from such regulations and furnish necessary information to the committee. The amendment would allow handlers to ship up to 250 cartons of organic lemons each week to designated market outlets, e.g. health food stores. This action is designed to facilitate the marketing of organic lemons. A similar exemption for the handling of organic lemons has been in effect for the past three marketing seasons.

The marketing order provides that the prorate base of each handler be based upon the handler's average weekly pick (the average weekly amount of lemons harvested and delivered to such handler's packinghouse during a specified number of weeks preceding the computation date). In recognition of the fewer number of weeks during which lemons are harvested in Districts 1 and 3, the order provides that handlers in such districts may request and be granted an upward adjustment in their average weekly pick to accelerate their receipt of allotment during the first half of their season, subject to payback during the last half of their season of the extra allotment received. Marketing Order 910 provides in § 910.53(h) that the percentage of adjustment specified in §§ 910.53(f)(1) and 910.153(e)(3), may be changed through informal rulemaking. Provision for 100 percent upward adjustment of average weekly picks of handlers in Districts 1 and 3 is currently in effect and such provision has been in effect since 1980. Continuance of such a provision would allow District 1 and 3 handlers the option of receiving a larger proportion of their allotment earlier in the season, and enable them to use their proportionate share of the marketing opportunity more advantageously.

This interim final rule also changes from eight to four the minimum number of successive weeks during which picks are interrupted by District 2 handlers, before they may apply for a new prorate base. Under provisions of the marketing order, District 2 handlers who become eligible for a new prorate base may also apply for accelerated averaging of weekly picks and upward adjustments to receive additional allotment. Section 910.53(h) provides that the number of weeks specified in § 910.53(f)(2) may be changed through informal rulemaking. Such an amendment would afford District 2 handlers the opportunity to receive adjusted allotment to handle lemons on an accelerated basis. A similar rule has been authorized in past seasons.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in other public procedures, and postpone the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this rule is based and the effective date

necessary to effectuate the declared policy of the act. This interim final rule relieves regulations on the handling of lemons and handlers have been apprised of such provisions and the effective date. Interested persons were given an opportunity to submit information and views on these amendments at public meetings of the committee, at which the committee without opposition recommended implementation of such requirements in their 1986–87 marketing policy. Also, this rule invites comments to make these amendments effective for subsequent crop years. This rule provides for a 30-day comment period. Any comments received will be considered prior to finalization of the rule.

This rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The rule is based upon the recommendations and information submitted by the Lemon Administrative Committee in its marketing policy and upon other available information. It is hereby found that this rule will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, Lemons, California, Arizona.

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.

2. Section 910.153 is amended by adding the following language at the end of the last sentence in paragraph (e)(2) and revising the first sentence of paragraph (e)(3) to read as follows:

§ 910.153 Prorate bases and allotments.

* * * * *

(e) * * *

(2) * * * Notwithstanding the provisions of this section any District 2 handler whose picks are interrupted for 4 successive weeks or more may apply for a new prorate base, for accelerated averaging of weekly picks, and for upward adjustments as provided herein.

(3) *Granting of upward adjustment for Districts 1 and 3 applicants.* Upon receiving a duly filed application for an upward adjustment by a District 1 or 3 handler pursuant to § 910.53(f)(1), the committee shall adjust the average weekly pick of such handler by increasing such picks in the amount requested, but not in excess of 50 percent of such handler's average weekly pick: *Provided,* That upon request of any such handler, the committee shall adjust such handler's average weekly pick in the amount requested but not in excess of 100 percent. * * *

* * * * *

3. Section 910.180 is amended by adding a new paragraph (d)(3) to read as follows:

§ 910.180 Lemons not subject to regulation.

* * * * *

(d) * * *

(3) Any person may be granted an exemption of up to 250 cartons per week, or an equivalent amount thereof, to market or distribute organic lemons to organic or health food wholesalers or retailers. Such lemons shall be exempt from volume and size requirements issued under this part. Persons shall file with the committee an application for exemption as described in paragraph (d)(1) of this section. Such persons shall also file weekly reports (LAC Form 8) during each week in which such organic lemons are shipped. For purposes of this section, "organic lemons" means lemons which are produced, harvested, distributed, stored, processed, and packaged without application of synthetically compounded fertilizers, pesticides, or growth regulators. In addition, no synthetically compounded fertilizers, pesticides, or growth regulators shall be applied by the grower to the field or area in which the lemons are grown for 12 months prior to the appearance of flower buds and throughout the entire growing and harvest season for lemons.

Dated: July 31, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–17591 Filed 8–4–86; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Maui Airlines, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Maui Airlines, Inc. to the list of carriers which have entered into agreement with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: May 4, 1986.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Maui Airlines, Inc. on May 4, 1986, to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

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

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, Maui Airlines, Inc.

Dated: July 29, 1986.

Harriet B. Marple,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 86-17550 Filed 8-4-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-35-AD; Amdt. 39-5386]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD), applicable to certain Boeing Model 747 airplanes, which requires an inspection for loose or failed bolts used for the forward attachment of the Numbers 1, 2, 3, 6, 7, and 8 trailing edge flap tracks to the wing lower surfaces. This action is prompted by a recent inflight separation of a portion of the Number 2 flap assembly. This condition, if not corrected, could lead to reduced controllability of the airplane.

EFFECTIVE DATE: September 11, 1986.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for, and subsequent replacement of, failed bolts for the forward attachment of Numbers 1, 2, 3, 6, 7, and 8 trailing edge flap tracks to the wing lower surfaces, was published in the Federal Register on April 7, 1986 (51 FR 11750). The comment period for the proposal closed on June 2, 1986.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

Comments were received from the Air Transport Association (ATA) of America on behalf of its members. One member indicated that it had inspected its fleet in accordance with Boeing Service Letter Number 747-SL-57-44, and requested that a note be provided in the final rule, which indicates that inspections made in accordance with this service letter are considered equivalent to inspections in accordance with Boeing Service Bulletin 747-57A2234. The FAA has determined that the Boeing Service Letters Number 747-SL-57-44 and 747-SL-57-44A provide an equivalent procedure for checking the torque of the bolts. A note has been added to paragraph A. of the AD.

Another ATA member commented that it would have difficulty in scheduling the inspection within the proposed compliance period of 300 cycles. It also requested that since positions 3 and 6 were the only locations where the problem was noted, the 300-cycle period should apply only to flap tracks 3 and 6, and that flap tracks 1, 2, 7, and 8 should be inspected at 1,000 cycles from the effective date of the AD. The FAA does not concur; loose bolts have been found at locations other than flap tracks 3 and 6. Furthermore, Boeing Service Letter Number 747-SL-57-44 was issued on December 18, 1985, recommending proof torque inspection within 30 days, thus providing operators with ample advance notice of the need to perform this inspection.

A comment was also received from the National Transportation Safety Board (NTSB). The NTSB supported the proposed action as it satisfies the intent of Safety Recommendation A-86-1. However, it is concerned that Safety Recommendation A-86-2, that recommended periodic reinspection of these bolts for proper torque, has not been incorporated. The FAA has carefully considered the need for a reinspection requirement as part of the AD, and has not included such a requirement for two reasons: First, this type of self-locking nut and bolt concept is used throughout the airplane, and service history has shown that if properly installed and torqued these bolts will remain in that condition. Second, the looseness of the bolts on the flap tracks is believed to have been caused by either the entrapment of paint or sealant under the fitting that later is squeezed out, or an improper torquing sequence that briefly distorts the fitting until it is loaded in service. The requirement for a one-time verification that the bolts are tight by the application of the specified torque will provide an adequate level of safety.

A comment was also received from the manufacturer. It recommended the following alternate means of compliance for paragraph B., or C., of the proposed AD:

- Allow the operators to defer replacement of bolts where 2 or less are broken for 1,200 flights, provided the non-broken bolts are retorqued to installation requirements.
- Delete the requirement to replace loose bolts provided the bolts are retorqued to installation requirements.
- Check the bolts for stress corrosion cracking at each "C" check (approximately 15 months).
- Inconel bolt replacement constitutes terminating action.

The FAA concurs that this alternate means of compliance will provide an acceptable level of safety, and it has been incorporated into the AD.

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

It is estimated that 83 airplanes of U.S. registry will be affected by this AD, that it will take approximately 42 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $139,440.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes listed in Boeing Alert Service Bulletin 747-57A2234, dated February 21, 1986, certificated in any category. To detect loose or broken bolts used for the forward attachment of the Numbers 1, 2, 3, 6, 7, and 8 trailing edge flap tracks to the wing lower surface, accomplish the following, unless already accomplished:

A. Prior to the accumulation of 5,000 flight cycles or within the next 300 flight cycles after the effective date of this AD, whichever occurs later, conduct a one-time inspection for loose or broken bolts in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747-57A2234, dated February 21, 1986, or later FAA-approved revisions.

Note: "Proof Torque" inspections previously accomplished in accordance with Boeing Service Letters Numbers 747-SL-57-44, dated December 18, 1985, or 747-SL-57-44A, dated December 20, 1985, constitute an equivalent means of compliance with the above requirement.

B. If one bolt is found loose or broken, replace all eight bolts used for the forward attachment of the trailing edge flap track to the wing lower surface within the next 600 flight cycles in accordance with Boeing Alert Service Bulletin 747-57A2234, dated February 21, 1986, or later FAA-approved revision.

C. If two bolts are found loose or broken, replace all eight bolts used for the forward attachment of the trailing edge flap track to the wing lower surface within the next 300 flight cycles in accordance with Boeing Alert Service Bulletin 747-57A2234, dated February 21, 1986, or later FAA-approved revision.

D. If three or more bolts are found loose or broken, replace all eight bolts used for the forward attachment of the trailing edge flap track to the wing lower surface prior to further flight in accordance with Boeing Alert Service Bulletin 747-57A2234, dated February 21, 1986, or later FAA-approved revision.

E. Alternate means of compliance for paragraphs B., or C., above, is:

1. If broken bolts are found, their replacement may be deferred for 1,200 flight cycles, provided the remaining non-broken bolts are retorqued to installation requirements in accordance with Boeing Alert Service Bulletin 747-57A2234, dated February 21, 1986, or later FAA-approved revisions.

2. If loose bolts are found, retorque all bolts to installation requirements in accordance with the Boeing Alert Service Bulletin 747-57A2234, dated February 21, 1986, or later FAA-approved revisions.

3. Perform a visual inspection of the H-11 bolts for broken bolts (evidenced by missing heads) within 15 months after the inspections of paragraph A., of this AD, and repeat the inspections thereafter at intervals not to exceed 15 months.

4. Replacement of the bolts with new bolts in accordance with Boeing Alert Service Bulletin 747-57A2234, dated February 21, 1986, or later FAA-approved revisions is terminating action for the repetitive inspections required by paragraph E.3.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

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

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

This amendment becomes effective September 11, 1986.

Issued in Seattle, Washington, on July 29, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-17517 Filed 8-4-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-ASW-16; Amdt. 39-5367]

Airworthiness Directives; Rogerson Hiller Corp., Model UH-12D, UH-12E, UH-12E4, and Military Model OH-23F and OH-23G Series Helicopters, Including all Models Converted to Turbine Power by STC SH177WE and STC SH178WE Equipped With Main Rotor Blade Fork, Part Number (P/N) 52110-3

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), (No. 79-18-04), which presently requires inspections of the main rotor blade fork on certain Rogerson Hiller Corporation series helicopters. After issuing AD 79-18-04, there was one complete blade fork failure that resulted in a fatal accident. The accident indicated that the visual inspection applicable to certain serial number main rotor blade forks is not effective. This amendment is needed to extend to all blade forks the daily check and the 100-hour interval dye penetrant inspections which are presently required by AD 79-18-04 for only selected serial number blade forks. This amendment also requires that the blade forks be inspected for proper serialization. These actions are needed to preclude blade fork failure which can cause the loss of the aircraft.

DATES: Effective Date: August 22, 1986.

Compliance: As indicated in the body of the AD.

ADDRESSES: The Rules Docket for this amendment is located at the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Yarges, Aerospace Engineer, Airframe Section, ANM-120S, Seattle Aircraft Certification Office, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, telephone (206) 431-2925.

SUPPLEMENTARY INFORMATION: This amendment supersedes Amendment 39-3540 (44 FR 50035), AD 79-18-04, which superseded Amendment 39-3441 (44 FR 18645), AD 79-07-01, issued in 1979 to require periodic inspection of the main rotor blade fork (P/N 52110-3) on the UH-12D and UH-12E model helicopters. The main rotor blade fork is used to attach the main rotor blade to the main rotor hub. Cracking had been found in service in the cylindrical section of the fork, originating at the tension-torsion pin (T.T. pin) hole. This cracking can lead to total failure of the blade fork, and thereby loss of the helicopter.

AD 79-18-04 recognizes two different main rotor blade fork designs, one with a shot-peened T.T. pin hole and one without. The shot-peened design currently receives a visual inspection, with a 10-power magnifying glass, per AD 79-18-04, every 643 hours' time in service (concurrent with the replacement of the T.T. pin). The nonshot-peened design receives a daily visual check plus a 100-hour interval time in service dye penetrant inspection of the T.T. pin hole and adjacent milled surfaces. The two designs are distinguished by serial number.

On January 16, 1986, a fatal accident occurred on a UH-12E helicopter for the type of failure that AD 79-18-04 was intended to prevent. The part was receiving a visual inspection with a 10-power magnifying glass every 100 hours' time in service.

The manufacturer has performed an investigation into main rotor blade fork cracking incidents. This investigation has disclosed that both shot-peened and nonshot-peened parts have cracked in

service. The manufacturer has recommended that the AD be revised to eliminate reference to serial numbers and to require a 100-hour interval time in service dye check on all such main rotor blade forks after an initial threshold of 250 hours' time in service. The FAA has carefully considered these findings and has determined to supersede the existing AD with a new AD requiring daily visual checks and 100-hour interval time in service dye penetrant inspections of all P/N 52110-3 main rotor blade forks, regardless of serial number. The dye penetrant inspection is applicable after the blade forks have accumulated 250 hours' time in service and is to be phased in within 10 hours' time in service on helicopters that have already accumulated 240 or more hours' time in service but were not previously being inspected in this manner.

This supersedure also requires that the main rotor blade forks be inspected to assure that they have a serial number permanently displayed on their outer surface. All forks that meet the type design for the UH-12D and E series helicopters were so serialized during their manufacture to provide a means of tracking their accumulated life. Nonserialized parts are to be discarded and replaced with serialized parts.

Additionally, the FAA has noted that certain helicopter models, which the AD should be applicable to, were not specifically cited in AD 79-18-04. Therefore, this supersedure revises the applicable helicopter model citation in the existing AD.

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

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

"FOR FURTHER INFORMATION CONTACT."

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new airworthiness directive.

Rogerson Hiller Corp.: Applies to Model UH-12D, UH-12E, and UH-12E4 series helicopters, including military Models OH-23F and OH-23G, and all those converted in accordance with STC's SH177WE and SH178WE, certificated in any category, equipped with main rotor blade fork P/N 52110-3.

Compliance is required as indicated, unless already accomplished.

To detect cracks and prevent failures which have occurred in the main rotor blade fork P/N 52110-3 at the outboard tension-torsion bar retention bolt hole, accomplish the following:

(a) Within the next 10 hours' time in service after the effective date of this AD, verify that each installed P/N 52110-3 fork has a serial number permanently displayed on its outer surface. Remove from service forks found not to be serialized and replace with serialized parts.

(b) Perform a daily visual check of P/N 52110-3 forks for cracks in the area of the outboard tension-torsion bar retention bolt hole. Washers and nuts need not be removed for this inspection. This check may be performed by the pilot.

Note.—For the requirements regarding the listing of compliance and method of compliance with this AD in the aircraft's permanent maintenance record, see § 91.173.

(c) On forks having 240 or more hours' time in service on the effective date of this AD, within the next 10 hours' time in service, unless already accomplished within the last 90 hours' time in service, and within each 100 hours' time in service thereafter from the last inspection, accomplish the inspection specified in (e).

(d) On forks having less than 240 hours' time in service on the effective date of this AD, accomplish the inspection specified in (e) prior to the accumulation of 250 hours' time in service and within each 100 hours' time in service thereafter from the last inspection.

(e) Perform a dye penetrant inspection, or FAA-approved equivalent, of the bolt hole and adjacent milled surfaces. For this inspection, remove the nut, washer, and pin.

(f) Replace cracked rotor forks with like serviceable parts prior to further flight.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 to operate aircraft to a base for the accomplishment of inspections required by this AD.

(h) An alternate method of compliance which provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

This amendment supersedes Amendment 39-3540 (44 FR 50035), AD 79-18-04.

This amendment becomes effective August 22, 1986.

Issued in Fort Worth, Texas, on July 18, 1986.

C.R. Melugin, Jr.,

Director, Southwest Region

[FR Doc. 86-17518 Filed 8-4-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-143-AD; Amdt. 39-5387]

Airworthiness Directives; SAAB-Fairchild Corporation Model SF-340A Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires modification to the engine cable controls on certain SAAB-Fairchild Model SF-340A airplanes. This action is prompted by reports of an incorrect fitting of O-ring seals. This situation, if not corrected, could lead to freezing of the engine cable(s).

EFFECTIVE DATE September 11, 1986.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires the installation of new O-ring seals on

certain SAAB-Fairchild Model SF-340A airplanes to prevent freezing of the engine control cables, was published in the **Federal Register** on February 10, 1985 (50 FR 4929).

Interested parties have been afforded an opportunity to participate in the making of this amendment.

No comments were received. After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($400). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

SAAB-Fairchild: Applies to Model SF-340A airplanes listed in SAAB-Fairchild Service Bulletin SF-340-76-007, Revision 3, dated August 14, 1985, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished. To prevent engine control cable freezing, accomplish the following:

A. Modify the engine control cable system in accordance with SAAB-Fairchild Service Bulletin SF340-76-007, Revision 3, dated August 14, 1985.

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

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

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

This amendment becomes effective September 11, 1986.

Issued in Seattle, Washington, on July 29, 1986.

Joseph W. Harrell,

Acting Director Northwest Mountain Region.

[FR Doc. 86-17516 Filed 8-4-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-29-AD; Amdt. 39-5388]

Airworthiness Directives; Short Brothers PLC Models SD3-30 and SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires sealing eight co-axial connectors in the fuel quantity indication system on certain Short Brothers PLC Models SD3-30 and SD3-60 series airplanes. This action is necessary to prevent ingress of moisture, which may result in erratic or false indications of fuel tank contents.

EFFECTIVE DATE: September 11, 1986.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires sealing of eight co-axial connectors in the fuel quantity indication system on certain Short Brothers PLC Models SD3-30 and SD3-60 series airplanes, was published in the **Federal Register** on March 12, 1986 (51 FR 8509).

Interested parties have been afforded an opportunity to participate in the making of this amendment. One comment was received which supported the NPRM.

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

It is estimated that 101 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $20,200.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($200). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new airworthiness directive:

Short Brothers PLC: Applies to Models SD3–30 and SD3–60 airplanes listed in Short Brothers PLC Service Bulletins SD3–28–22, Revision 2, dated July 1985 (for Model SD3–30 airplanes), and SD360–28–06, Revision 2, dated July 1985 (for Model SD3–60 airplanes), certificated in any category. Compliance is required within 90 days after the effective date of this AD. To prevent erroneous or erratic fuel quantity indications caused by moisture ingress into the fuel tank gauging system co-axial connectors, accomplish the following, unless previously accomplished:

A. Seal the affected co-axial connectors in accordance with Short Brothers PLC, Service Bulletins SD3–28–22, Revision 2, dated July 1985, for Model SD3–30 airplanes, and SD360–28–06, Revision 2, dated July 1985, for Model SD3–60 airplanes.

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective September 11, 1986.

Issued in Seattle, Washington, on July 29, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–17515 Filed 8–4–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 86–NM–24–AD; Amdt. 39–5385]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection for proper self-locking torque of certain self-locking nuts on certain Boeing Model 737 airplanes, and replacement, if necessary. This action is prompted by detection of several nuts that were found to have insufficient self-locking torque for proper self-locking. This condition, if not corrected, could result in the loss of an affected nut and the loss of proper retention of the associated airplane component.

DATE: Effective September 11, 1986.

ADDRESSES: The applicable service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM–120S; telephone (206) 431–2926. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection and replacement, as necessary, of certain self-locking nuts in significant applications on certain Boeing Model 737 series airplanes was published in the **Federal Register** on March 26, 1986 (51 FR 10406). The comment period for the proposal closed on May 19, 1986.

Interested parties have been afforded an opportunity to participate in the making of this AD and due consideration has been given to all comments received.

The Air Transport Association (ATA) of America, on behalf of its affiliates, provided the following comments:

The ATA commented that although the areas specified for inspection may be structurally significant, it does not necessarily follow that loosening of the self-locking nut will result in an unsafe condition. It was noted that for the vertical fin installation, even the loss of the nut will not cause the bolt to back off since the bolt head is on top against another structural surface. The FAA does not concur. A review of both design drawings and production hardware revealed no such restraining structure. Furthermore, the manufacturer indicated that, although it may be standard practice to install these bolts with the head on top, this is not a design requirement.

An operator noted that, although the applicability statement in the proposed rule includes all airplanes listed in Boeing Service Letter 737–SL–27–28, dated January 16, 1986, the service letter does not describe any inspections for airplanes line numbered airplanes 1 thru 929. Therefore, the operator requested that the final rule be revised to delete line numbered airplanes 1 thru 929. The FAA concurs. The applicability statement of the final rule has been revised to include only those airplanes for which detailed inspection areas are specified. These inspection areas include, the Body Buttock Line (BBL) 70.85 wing to body splice plate, the thrust reverser secondary deactivation pin, the vertical fin front spar to closure rib attachments, and apply only to airplane Groups I and II as specified in Boeing Service Letter 737–SL–27–28, dated January 16, 1986.

Another operator commented that several of the nut installations specified for inspections are not applications affecting airworthiness and that the remaining areas are designed such that a longer threshold for compliance is warranted. In particular, the operator cited the BBL 70.85 wing to body splice and the thrust reverser secondary deactivation pins as inspection areas which should be deleted from the AD. Furthermore, the operator recommended that, if inspections are necessary, the threshold should be extended from 180 days to 18 months to allow scheduling.

In regard to the recommendation for extension of the threshold, the FAA has reviewed the comments received and the design of each structural detail involved and has determined that the compliance time may be extended to 18 months without derogating safety, and the final rule has been revised accordingly. The FAA does not concur with the suggestion that the BBL 70.85 and thrust reverser inspections are unnecessary. The BBL 70.85 inspection applies to four three-quarter inch diameter countersunk bolts common to the side of body splice plate and the rear spar lower chord. This is obviously a significant structural area and has been cited as an area requiring inspection under the 737 Supplemental Structural Inspection Program. These fasteners must maintain the clamp-up which is vital to the structural integrity of this joint. Accordingly, the service letter specifies an external visual inspection to assure adequate clamp-up. Although these bolts are installed in close reamed holes and sealed with tank sealant, this is not considered a positive means of

retention without adequate self-locking torque. The thrust reverser deactivation pin, though seldom used, does provide a vital function. It is necessary to prevent deployment of the thrust reverser when the thrust reverser must be rendered inactive. Furthermore, the engine area is one of high noise and vibration, both of which may loosen any nuts which do not have a positive means of retention.

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

It is estimated that 140 airplanes of U.S. registry will be affected by this AD. A total of 83 airplanes will require 4 manhours per airplane for inspections and the remaining 57 airplanes will require 14 manhours for inspections. Based on an average labor cost of $40 per manhour, the total cost impact of this AD to U.S. operators is estimated to be $45,200.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing

Applies to Model 737 series airplanes, line numbers 930 and above, listed in Boeing Service Letter 737-SL-27-38, dated January 16, 1986, certificated in any category. To detect nuts installed at the Body Buttock Line (BBL) 70.85 wing-to-body splice plate, the thrust reverser secondary deactivation pin, and the vertical fin front spar to closure rib attachments, that have insufficient self-locking torque characteristics, accomplish the following, unless already accomplished:

A. Within the next 18 months after the effective date of this AD, check the self-locking nuts, P/N BACN10JC12CM and P/N BACN10JC 12CD, for proper self-locking torque in accordance with Paragraph II of Boeing Service Letter 737-SL-27-38, dated January 16, 1986, or later FAA-approved revision. If any self-locking nut does not meet the torque criteria specified in the service letter, replace it prior to further flight with an appropriate nut which meets the torque criteria.

B. An alternate means of the compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

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

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

This amendment becomes effective September 11, 1986.

Issued in Seattle, Washington, on July 29, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-17513 Filed 8-4-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-13-AD; Amdt. 39-5384]

Airworthiness Directives: Boeing Model 727 and 727-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that supersedes an existing AD that requires inspection, and repair, if necessary, of the wing center section front spar on certain Boeing Model 727 airplanes. Since issuance of the existing AD, there have been reports of cracking in areas adjacent to those required to be inspected, and cracking in areas previously repaired. This AD expands the area that must be inspected, eliminates one repair procedure referenced in the existing AD, and requires reinspection of areas previously repaired in accordance with that procedure .

DATE: Effective September 11, 1986.

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

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-2924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations was published in the Federal Register on March 31, 1986 (51 FR 10878) to supersede AD 70-15-15, Amendment 39-3417, and require inspection and repair, if necessary, of the wing center section front spar on certain Boeing Model 727 airplanes. The Comment period for the proposal closed on May 23, 1986.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Three comments were received.

The first commenter was an operator who had not found any cracks on airplanes which had accumulated over 20,000 landings prior to the incorporation of the back-to-back stiffener modification. Therefore, the operator felt that the initial inspection on airplanes that incorporated the back-to-back stiffener modification after 20,000 landings could be extended from 500 to 1,000 landings. The NPRM, as issued, specified in paragraph F. that the initial inspection be within 1,000 landings on airplanes that have accumulated 20,000 landings prior to the installation of the back to-back stiffener. A cross-reference has been inserted in paragraph A. of the AD to clarify that the initial compliance period in that paragraph doesn't apply to airplanes subject to pargraph F.

The second commenter stated that the proposed rule does not discuss airplanes

that had less than 20,000 landings prior to the incorporation of the back-to-back stiffener modification. The proposed rule did not discuss airplanes in this category because the FAA had determined that additional inspections of these airplanes are not necessary. Paragraph F.1. has been added to the final rule to clarify this point.

The third commenter stated that if a crack less than 5 inches long was detected on an airplane with the back-to-back stiffeners installed after 20,000 landings, the proposed AD would require the airplane to be modified in accordance with paragraph E. No provision was proposed to inspect and modify the airplane in accordance with paragraph B. or C. The FAA concurs, that if cracks less than 5 inches long are detected it is acceptable to inspect and modify and repetitively inspect the airplane in accordance with paragraph B., or C., as appropriate. The final rule has been revised to incorporate this alternative.

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

It is estimated that 130 airplanes will be affected by this AD, that it will take approximately 24 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. Operators is estimated to be $124,800.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 727 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing

Applies to all Model 727 and 727–100 series airplanes listed in Boeing Service Bulletin 727–57–107, Revision 5, dated December 13, 1985, certificated in any category. To detect cracks in the wing center section front spar web between Left Buttock Line (LBL) 58.64 and Right Buttock Line (RBL) 58.64, accomplish the following, unless already accomplished:

A. Except as provided in paragraph F., prior to the accumulation of 15,000 landings, or within the next 500 landings after the effective date of this AD, whichever occurs later, unless accomplished within the last 500 landings prior to the effective date of this AD, visually inspect the wing center section for cracks in accordance with Figure 1 of Boeing Service Bulletin 727–57–107, Revision 5, dated December 13, 1985, or later FAA-approved revisions. If no cracks are detected, repeat the visual inspection at intervals not to exceed 1,000 landings.

B. If a single crack less than two inches in length is detected on either side of BBL 0.0, before further flight, the crack must be stop drilled at each end in accordance with the Boeing 727 Structural Repair Manual (SRM) and visually reinspected at intervals not to exceed 10 landings for crack growth beyond the stop holes. If crack growth occurs beyond any stop hole, accomplish the procedures required by paragraph C., or D., of this AD.

C. If a single crack between two and five inches in length is detected on either side of BBL 0.0., before further flight, the crack must be stop drilled at each end in accordance with the Boeing 727 SRM, and the crack must be repaired in accordance with Boeing Drawing Number 69–62491–2. Visually reinspect the affected area at intervals not to exceed 200 landings for crack growth beyond any stop hole. If crack growth occurs beyond any stop hole, accomplish the procedures required by paragraph D., below.

D. If any crack greater than five inches is detected, or if more than one crack on either side of BBL 0.0 is detected, they must be stop-drilled in accordance with the Boeing 727 SRM, and modified in accordance with paragraph E., of this AD.

E. To terminate the repetitive inspection requirements of paragraphs A., B., C., and F. of this AD, accomplish one of the following:

1. Accomplish the modification described in Part I.D. of the Accomplishment Instructions of Boeing Service Bulletin 727–57–107, Revision 5, or later FAA-approved revision; or

2. Accomplish the interim modification described in Part I.E. of the Accomplishment Instructions of Boeing Service Bulletin 727–57–107, Revision 5, or later FAA-approved revision. Prior to the accumulation of 12,000 landings after the incorporation of the interim modification, eddy current inspect the fastener and any stop holes for crack growth, remove the fatigued metal, stop-drill any new cracks in accordance wtih the Boeing 727 SRM, and incorporate the terminating modification in accordance with Part I.E. of the Accomplishment Instructions of Boeing Service Bulletin 727–57–107, Revision 5, or later FAA-approved revision.

F. With respect to airplanes that have been modified by installing angles back-to-back with existing stiffeners:

1. Airplanes modified prior to the accumulation of 20,000 landings require no further action.

2. Airplanes modified after the accumulation of 20,000 landings must be inspected within 1,000 landings after the effective date of this AD in accordance with Figure 1 of Boeing Service Bulletin 727–57–107, Revision 5, or later FAA-approved revision. If cracks are found, before further flight, accomplish paragraph B., C. or D., as appropriate, of this AD. If no cracks are found, reinspect thereafter at intervals not to exceed 1,000 landings.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

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

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

This supersedes AD 70–15–15, Amendment 39–1048, as amended by Amendments 39–1188, and 39–3417.

This Amendment becomes effective September 11, 1986.

Issued in Seattle, Washington, on July 29, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–17514 Filed 8–4–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–ANE–18]

Establishment of the Rangeley, Maine, 700 Foot Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Rangeley, Maine, 700 Foot Transition Area so as to provide protected airspace for aircraft executing a new Nondirectional Radio Beacon Airport (NDB–A) Standard Instrument Approach Procedure (SIAP) to the Rangeley Municipal Airport, Rangeley, Maine.

EFFECTIVE DATE: 0901 GMT, October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Stanley E. Matthews, Manager, Operations, Procedures and Airspace Branch, ANE–530, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone (617) 273–7139.

SUPPLEMENTARY INFORMATION:

History

On May 12, 1986, the FAA proposed to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Rangeley, Maine, 700 Foot Transition Area so as to provide protected airspace for aircraft executing a new Nondirectional Radio Beacon Airport (NDB–A) Standard Instrument Approach Procedure (SIAP) to the Rangeley Municipal Airport, Rangeley, Maine. [51 FR 17365]

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

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Rangeley, Maine, 700 Foot Transition Area so as to provide protected airspace for Instrument Flight Rule aircraft executing a new Nondirectional Radio Beacon Airport (NDB–A) Standard Instrument Approach Procedure (SIAP) to the Rangeley Municipal Airport, Rangeley, Maine.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

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

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

§ 71.181 [Amended]

2. By amending Section 71.181 as follows:

Rangeley, Maine, Transition Area

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the center, of the Rangeley Municipal Airport, latitude 44 59'00" N., longitude 70 39'45" W., Rangeley, Maine, and within 3.5 miles each side of the Rangeley NDB, latitude 44 56'02" N., longitude 70 45'03" W., 244 Magnetic (266 True) bearing from the Rangeley NDB, extending from the 6.5 mile radius to 10 miles southwest of the Rangeley NDB.

Issued in Burlington, Massachusetts, on July 23, 1986.

James I. Lucas,

Manager, Air Traffic Division, ANE–500.

[FR Doc. 86–17510 Filed 8–4–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79–76–115 (New Mexico–14); Order No. 455]

High-Cost Gas Produced From Tight Formations; New Mexico

Issued: July 31, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Section 107(c)(5) of the Natural Gas Policy Act of 1978 authorizes the Federal Energy Regulatory Commission to designate certain types of gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas which may receive an incentive price. 18 CFR 271.703 (1986). That rule established procedures for jurisdictional agencies to submit recommendations of areas for designation as tight formations. This order adopts the recommendation of the State of New Mexico Energy and Mineral Department Oil Conservation Division that portions of the Dakota Producing Interval located in the Basin-Dakota Gas Pool, San Juan County, New Mexico, be designated as a tight formation under § 271.703(d) of the Commission's regulations.

EFFECTIVE DATE: This rule is effective September 2, 1986.

FOR FURTHER INFORMATION CONTACT: Mitchell L. Cohen, (202) 357–5491; Victor H. Zabel, (202) 357–8616; or Michael J. Boyle, (202) 357–5689.

SUPPLEMENTARY INFORMATION:

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

Based on the recommendations made by the State of New Mexico Energy and Minerals Department Oil Conservation Division (New Mexico), the Federal Energy Regulatory Commission (Commission) amends its regulations [1] to include a portion of the Dakota Producing Interval in the Basin-Dakota Gas Pool, San Juan County, New Mexico, as a designated tight formation eligible for incentive pricing.

Background

On April 19, 1982, the Commission received a recommendation pursuant to § 271.703(d) of the Commission's regulations [2] from New Mexico that a specified area of the Dakota Producing Interval located in the Basin-Dakota Gas Pool, San Juan County, New Mexico, be designated as a tight formation. A notice proposing the designation was issued on May 3, 1982.[3] Southern California Gas

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[1] 18 CFR 271.703(d) (1986).

[2] *Id.*

[3] 47 FR 19719 (May 7, 1982). The Commission received three comments on the proposed rule: one in support of New Mexico's recommendation from Husky Oil Company and two in opposition, one jointly from Southern California Gas Company and Pacific Lighting Gas Supply Company and one from Pacific Gas and Electric Company. No party requested a public hearing.

Company, Pacific Lighting Gas Supply Company (SoCal/PLGS), and Pacific Gas and Electric Company filed comments stating that certain acreage could be subject to exclusion pursuant to § 271.703(c)(2)(i)(D) of the Commission's regulations since, in their view, the area was previously authorized for infill drilling by New Mexico and could be developed without incentive pricing. SoCal/PLGS also claimed that the royalty rate and average well cost data used by Consolidated Oil and Gas, Inc. (Consolidated) to support its original application to New Mexico were not representative and should not be relied upon. They further argue that producers will have little incentive to keep costs down if they know that they can rely on such costs to show the need for incentive pricing.

On June 24, 1982, the Commission requested additional information, specifically the spud dates for the wells drilled into the Dakota Formation within the application area. The Commission received that information on January 23, 1985.

Discussion

The evidence submitted by New Mexico supports the assertion that certain acreage in the Dakota Producing Interval in the Basin-Dakota Gas Pool, San Juan County, New Mexico, meets the guidelines contained in § 271.703(c)(2)(i). The evidence is based on economic data, geologic data from eighteen wells, and engineering and production data from three wells located within the application area and two wells located just east of the application area.

The original application filed by Consolidated with New Mexico sought tight formation designation only for the Dakota Formation underlying 29,645 acres. New Mexico had sufficient data to consider a larger stratigraphic area and made its recommendation for the Dakota Producing Interval (comprised of the Granerous Shale Formation, the Dakota Formation, and the productive upper portion of the Morrison Formation). Based upon economic data provided by Consolidated, however, New Mexico excluded 14,482 acres from the original application area. New Mexico states that in its judgment the excluded acreage can be developed absent the incentive price established in 18 CFR 271.703(a) (1986). Thus, New Mexico's recommendation to the Commission is for some 15,163 acres of the Dakota Producing Interval in the Basin-Dakota Gas Pool, San Juan County, New Mexico.

Analysis of the data submitted indicates that the guidelines contained in § 271.703(c)(2)(i) are satisfied.[4] The average *in situ* gas permeability throughout the Dakota Producing Interval is expected to be 0.0296 millidarcy [5] which is less than the maximum allowable 0.1 millidarcy. The average observed flow rate prior to stimulation is sixty-three Mcf per day [6] which is less than the maximum allowable rate of 251 Mcf per day. None of the wells drilled into the Dakota Producing Interval within the recommended area are expected to produce, prior to stimulation, more than five barrels of crude oil per day. Finally, even though the Basin-Dakota Gas Pool in San Juan County is authorized for infill drilling,[7] the record supports New Mexico's holding that incentive prices are necessary for the development of the recommended area. The assertion by SoCal/PLGS that New Mexico's consideration, are unrepresentative in the area. New Mexico's reliance on the royalty rates provided by Consolidated was unreasonable is unsupported. SoCal/PLGS have provided no evidence that such rates, which are legitimate expenses for New Mexico's reliance on the average well cost data provided by Consolidated also appears reasonable and no contrary information has been provided by opposing commenters. New Mexico, applying the standard set forth in § 271.703(c)(2)(i)(D) of the Commission's regulations, excluded nearly half of the acreage originally applied for by Consolidated because that area could be economically developed without additional incentives. This Commission will not disturb the findings by New Mexico that incentive pricing is necessary for development of the recommended area, since New Mexico's recommendation is supported by evidence in the record which is uncontradicted by opposing commenters. Accordingly, the Commission adopts New Mexico's recommendation.

The Commission orders

The Commission adopts the recommendation made by the State of New Mexico Energy and Minerals Department Oil Conservation Division that a portion of the Dakota Producing Interval within the Basin-Dakota Gas Pool, San Juan County, New Mexico, be designated as a tight formation under § 271.703(d).

This amendment shall become effective September 2, 1986.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Title 18, *Code of Federal Regulations*, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d) (197) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(197) Dakota Producing Interval in New Mexico. RM79–76 (New Mexico–14).

(i) *Delineation of formation.* The Dakota Producing Interval is located in Township 31 North, Range 13 West, Sections 1 through 12, Sections 14 through 21, Sections 28 through 32, NMPM, San Juan County, New Mexico. The interval is within the Basin—Dakota Gas Pool, in the northwestern portion of the San Juan Basin near the Hogback Monocline.

(ii) *Depth.* The Dakota Producing Interval is composed of the Granerous Shale Formation, the Dakota Formation, and the productive upper portion of the Morrison Formation. The average depth to the top of the Dakota Formation is 6,544 feet. Gross thickness of the interval is approximately 400 feet.

[FR Doc. 86–17565 Filed 8–4–86; 8:45 am]

BILLING CODE 6717-01-M

[4] The analysis included the data from the two wells outside the original application area.

[5] The average *in situ* gas permeability of those wells within the original application area is 0.0234 millidarcy.

[6] The average flow rate for those wells within the original application area is twenty-two Mcf per day.

[7] New Mexico Order No. R–1670–V, effective July 1, 1979.

DEPARTMENT OF THE TREASURY

CUSTOMS SERVICE

19 CFR Part 101

[T.D. 86-145]

Customs Regulations Amendment Relating to the Customs Field Organization; Shreveport and Bossier City, LA

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This notice changes the field organization of the Customs Service by establishing a new port of entry, on a 2-year trail basis, at Shreveport and Bossier City, Louisiana. This change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

EFFECTIVE DATE: September 4, 1986.

FOR FURTHER INFORMATION CONTACT: Richard Coleman, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

Customs ports of entry are places (seaports, airports, or land border ports) designated hy the Secretary of the Treasury were Customs officers or employees are assigned to accept entries of merchandise, clear passengers, collect duties, and enforce the various provisions of Customs and related laws.

The Caddo-Bossier Port Commission filed an application with Customs requesting the establishment of a new Customs port of entry at Shreveport and Bossier City, Louisiana. A review of that application confirmed that the proposed port met the minimum Customs criteria for establishing ports of entry.

A notice proposing the establishment of the Shreveport-Bossier City port of entry, in a 2-year trail basis, was published in the **Federal Register** on January 22, 1986 (51 FR 2897). The notice solicited public comment on the matter.

Discussion of Comments

Seventy-three comments were received in response to the notice. Seventy-one commenters supported establishment citing the benefits that such a port would provide to the region's growing international trade business, as well as the over-all positive effect on the area's economic and employment outlook. Of the two opposing comments, one doubted the new port would have a sufficient workload, and the other expressed concern that opening a new port would somehow drain the resources available for existing ports.

As to the workload argument, Customs has a commitment from the port that it will meet the minimum workload standards of a port of entry. At the end of the 2-year period, the practicality of maintaining a port of entry at Shreveport-Bossier City will be reevaluated in light of the actual Customs workload. As to the second argument, the opening of this port will in no way make the operation of any existing port less efficient.

After analysis of the comments and further review of the matter, Customs is establishing, on a 2-year trial basis, a port of entry at Shreveport-Bossier City, Louisiana.

Changes in the Customs Field Organization

The Secretary of the Treasury is advised by the Commissioner of Customs in matters affecting the establishment, abolishment, or other change in ports of entry. Customs ports of entry are established under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp. Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-05 (47 FR 2449).

Customs has determined that it is in the public interest to establish, on a 2-year trial basis, a port of entry at Shreveport-Bossier City, Louisiana. The limits of the port of entry of Shreveport-Bossier City are the city limits of Shreveport-Bossier City, Louisiana.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Goverment agencies).

PART 101—[AMENDED]

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

Authority: 5 U.S.C. 301, 19 U.S.C. 1, 66, 1202 (Gen. Hdnote 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

§ 101.3 [Amended]

To reflect this change, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by adding, "Shreveport-Bossier City La., including the territory described in T.D. 86-145." directly below, "Nashville, Tenn., including the territory described in T.D. 84-126," in the column headed "Ports of entry" in the New Orleans, Louisiana district.

Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by section 3 of that E.O. is not required. Similarly, this document is not subject to the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*) and the regulatory analysis and other requirements of 5 U.S.C. 603 and 604 are not applicable.

Customs routinely establishes and expands Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this amendment may have a limited effect upon some small entities in the area affected, it is not expected to be significant because establishing and expanding port limits at Customs ports of entry in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities.

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.

William von Raab,

Commissioner of Customs.

Approved: July 9, 1986.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86-17458 Filed 8-4-86; 8:45 am]

BILLING CODE 4820-02-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19 and 250

[T.D. ATF-233; Ref: T.D. ATF-175 Notice No. 558]

Implementing the Caribbean Basin Recovery Act; Distribution of Excise Taxes on Imported Rum

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule amends ATF regulations to implement a portion of Title II of Pub. L. 98-67 (Caribbean Basin Economic Recovery Act). This law, signed by President Reagan on August 5, 1983, affects the distribution of Federal excise taxes collected on rum imported into the United States after June 30, 1983. The purpose of this law was to ensure that the economies of Puerto Rico and the United States Virgin Islands are not adversely affected by the elimination of importation duties on selected goods imported into the United States from certain countries located in the Caribbean Basin. This final rule supersedes the temporary rule (T.D. ATF-175) on this subject which was published in the **Federal Register** on May 16, 1984 (49 FR 20800).

EFFECTIVE DATE: September 4, 1986.

FOR FURTHER INFORMATION CONTACT: Robert White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7531).

SUPPLEMENTARY INFORMATION:

Background

Under section 5001 of the Internal Revenue Code (IRC) of 1954 (as amended), the United States imposes an excise tax of $12.50 per proof gallon on distilled spirits, including rum, produced in or imported into the United States. Section 7652 of the IRC provides for merchandise manufactured in Puerto Rico and brought into the U.S. for consumption or sale, and merchandise produced in the Virgin Islands and imported into the United States, to be subject to a tax equal to the tax imposed in the United States upon like merchandise of domestic manufacture.

Excise taxes collected under the Internal Revenue laws of the United States on merchandise produced in Puerto Rico and transported to the United States (less the estimated amount necessary for payment of refunds and drawbacks), or consumed in the island, shall be covered into the Treasury of Puerto Rico at the rate prescribed by 26 U.S.C. 7652(f). The excise taxes collected on merchandise produced in the Virgin Islands and shipped to the United States (less certain amounts deposited to the U.S. Treasury as miscellaneous receipts), shall be paid to the Treasury of the Virgin Islands at the rate prescribed by 26 U.S.C. 7652(f). Section 7652(f) states that, with respect to taxes imposed under section 5001 or section 7652 on distilled spirits, the amount covered into the Treasuries of Puerto Rico and the Virgin Islands shall not exceed the lesser of the rate of $10.50, or the tax imposed under section 5001(a)(1), on each proof gallon. In addition, section 7652(c) states that merchandise containing distilled spirits shall not be treated as produced in Puerto Rico or the Virgin Islands unless at least 92 percent of the alcoholic content in such merchandise is attributable to rum.

In general, subject to the limitations stated in sections 2681(b) (2) and (3) of the Deficit Reduction Act of 1984 (Pub. L. 98-369), section 7652(c) of the IRC shall not apply with respect to merchandise containing distilled spirits brought into the United States from Puerto Rico after February 29, 1984, and before January 1, 1985.

The Treasury of Puerto Rico is paid directly from funds transferred by the Internal Revenue Service (IRS) on a monthly basis. The Virgin Islands receives fiscal year advances of funds based on estimates made by its Treasury and the U.S. Department of the Interior. The IRS reports the actual amount of merchandise that comes into the U.S. from the Virgin Islands on a monthly basis to the Department of the Interior, which is responsible for transferring the appropriate funds to the Virgin Islands and making adjustments to the amount of each fiscal year's advance to include any difference in the prior fiscal year's estimate and actual quantities brought into the United States.

The following procedures are presently used for determining the amount of excise taxes collected on bulk and cased distilled spirits (with an alcohol content of at least 92 percent rum) manufactured in Puerto Rico and the Virgin Islands, and brought into the U.S. The distilled spirits plants that bring in bulk spirits from Puerto Rico and the Virgin Islands report the amount received into their processing account, adjusted by the percentage of overall monthly gains or losses, on ATF Form 5110.28. The ATF regional offices receive Forms 5110.28 and report the figures to ATF headquarters of ATF F 5600.8 for bulk spirits transported from Puerto Rico and the Virgin Islands. ATF headquarters consolidates these figures and sends them to IRS. For other than bulk distilled spirits transferred in bond to a distilled spirits plant, the excise tax collections on such distilled spirits are reported to the appropriate IRS offices in the United States in one of two ways. The first way concerns collections reported by Customs. Each Customs port of entry reports the amount of excise tax collected by it on merchandise (including distilled spirits) brought into the U.S. from all areas outside the United States on a Customs internal document. The information from this document is then entered into Customs' computer system. Customs reports monthly to IRS headquarters in Washington the amount of excise tax it collected on all merchandise brought into the United States from Puerto Rico and the Virgin Islands. This figure from Customs includes cased distilled spirits (including rum) transported into the U.S. from Puerto Rico and the Virgin Islands. The second way of reporting concerns collections reported by the United States IRS office in Puerto Rico. This office reports on excise taxes collected in Puerto Rico on products containing distilled spirits shipped to the United States. Most of the collections shown on this report are for cased rum although some of the collections are for nonbeverage products containing distilled spirits. The report is sent to the IRS Philadelphia Service Center. Both the Customs report and the report from the IRS office in Puerto Rico are used to help determine how much cover over of excise taxes is due to the Puerto Rican Treasury. In regard to the Virgin Islands, only the Customs report is used.

Changes Due to Pub. L. 98-67

As a result of the Caribbean Basin initiative, the Caribbean Basin Economic Recovery Act (Pub. L. 98-67, Title II) was passed, effective August 5, 1983, to promote economic revitalization and facilitate expansion of economic opportunities in the Caribbean Basin region. Subtitle A of Title II of this Act eliminates duties on certain merchandise, including rum, imported from Caribbean Basin countries which have been certified by the President. The elimination of the duties should reduce the price of Caribbean Basin imported rum to U.S. consumers, which may result in a reduction of Puerto Rican and Virgin Islands rum sold in the United States. Any such reducton in the U.S. sales of rum produced in Puerto Rico and the Virgin Islands will reduce revenues (from excise taxes collected on rum coming into the United States from Puerto Rico and the Virgin Islands) transferred from the U.S. Treasury to the Governments of these two possessions.

Although the Caribbean Basin Economic Recovery Act was passed for the purpose of benefiting countries in the Caribbean Basin that meet certain criteria, this act was not intended to reduce the distilled spirits excise tax revenues of Puerto Rico and the Virgin Islands.

In order to protect the revenues of Puerto Rico and the Virgin Islands, section 221 was added to the Caribbean Basin Economic Recovery Act. This section states that distilled spirits excise taxes collected under section 5001(a)(1) of the Internal Revenue Code of 1954 on all rum imported into the United States from outside the country (including rum from possessions other than the Virgin Islands and Puerto Rico), whether or not from a Caribbean Basin country, will be paid over to the Treasuries of Puerto Rico and the Virgin Islands. These payments are to be reduced by the estimated amount necessary for payment of refunds and drawbacks. The Act does not impose restrictions on the uses to which the Government of the Virgin Islands or the Government of Puerto Rico may put the revenues they receive under the provision of this section of the Act.

The Caribbean Basin Economic Recovery Act states that the Secretary of the Treasury shall, from time to time, prescribe by regulation a formula for the division of the excise tax collections on imported rum between Puerto Rico and the Virigin Islands. For the purposes of this section of the Act, the term "rum" means any article classified under item 169.13 or 169.14 of the Tariff Schedules of the United States (19 U.S.C. 1202).

Temporary Rule (T.D. ATF-175)

On May 16, 1984, ATF published a temporary rule (T.D. ATF-175) in the **Federal Register** (49 FR 20800) which provided for a distribution that was proportional to the average excise taxes collected on rum brought into the U.S. from Puerto Rico and the Virgin Islands during fiscal years 1980, 1981, and 1982. As a result, Puerto Rico has been receiving 86.4 percent and the Virgin Islands 13.6 percent of the excise taxes collected on rum imported into the United States from all areas other than Puerto Rico and the Virgin Islands.

A temporary rule was used rather than a notice of proposed rulemaking because it was necessary to get regulations into effect quickly so that Puerto Rico and the Virgin Islands could begin receiving the excise taxes collected on imported rum. This was especially necessary since Congress made this section of the Caribbean Basin Economic Recovery Act retroactive to July 1, 1983. However, in the preamble of the temporary rule, ATF stated that the formula published in the regulation's portion of the temporary rule did not take into account the fact that either Puerto Rico or the Virgin Islands might lose more revenue than the other due to rum imports. We stated in the temporary rule that ATF was in the process of compiling and evaluating information which would enable it to propose a formula that would compensate Puerto Rico and the Virgin Islands for any reduction in their revenues due to rum imports. We also stated that the formula would be published in the **Federal Register** in the near future as a notice of proposed rulemaking so that all interested persons could submit comments.

Notice No. 558

On February 14, 1985, ATF published a notice of proposed rulemaking (Notice No. 558) in the **Federal Register** (50 FR 6203) which proposed amending 27 CFR Part 250 to change the formula used for distributing the excise taxes collected on imported rum to the Treasuries of Puerto Rico and the Virgin Islands. The formula proposed in the notice of proposed rulemaking took into consideration a situation whereby either Puerto Rico or the Virgin Islands lost more revenue than the other as a result of an increase in the share of the U.S. rum market by other Caribbean Basin countries. The proposed formula provided for a greater allocation of U.S. excise taxes collected on rum from areas other than Puerto Rico and the Virgin Islands to the possession (Puerto Rico or the Virgin Islands) whose relative share in the total U.S. rum market had decreased. The proposed formula took into account the total shipments of rum to the United States, the shipments of rum from Puerto Rico and the Virgin Islands to the United States, and the relative shares of rum brought into the United States from each of these two possessions prior to passage of the Caribbean Basin Economic Recovery Act. For a more complete description of the proposed formula, see Notice No. 558.

Comments

Two comments were received in response to Notice No. 558. One was from the Governor of the United States Virgin Islands and the other was from the Director of the Puerto Rico Federal Affairs Administration. The Governor of the Virgin Islands stated that the proposed formula in Notice No. 558 appears to be fair and in accordance with the intent of the provision in the law to protect Matching Fund revenues from foreign competition. In this regard, he stated that the proposed formula was superior to alternatives 1, 2, or 3 (proposed in Notice No. 558) in meeting the intent of the law. The Governor further stated that the formula proposed in Notice No. 558 reflects closer conformity with the intent and spirit of the law by protecting the mainland industry and at the same time maintaining the actual competitive position between the Virgin Islands and Puerto Rico in the world market. In addition, the Governor stated that the alternatives listed in Notice No. 558 suggest arbitrary cases which may or may not be in the best interest of the Virgin Islands. The Governor went on to state that during the period when the Virgin Islands was protesting the inclusion of rum for duty free treatment, many of the Caribbean Basin Initiative (CBI) countries noted that they produce and sell bottled rum and were not strongly interested in the bulk rum market. If this continues to be their position throughout the twelve year CBI program, then the excise taxes on Virgin Islands rum would not be at risk from the CBI countries except to the extent that Virgin Islands' bottled rum becomes less competitive. This is due to the fact that the Virgin Islands distills largely unaged, private label bulk rums. However, the Governor stated that the U.S. Virgin Islands has only one major rum producer, and that distillery could be lost to competition in two ways. First, CBI countries at any time could change their position vis-a-vis bulk rum production. Second, the CBI countries' bottled rum could eventually compete effectively against one or more Puerto Rico distrilleries. To the extent that the competition ended there, Puerto Rico's share of the excise tax dollars would increase, which is as it should be under the provisions of section 221. However, if a Puerto Rico distillery under pressure from CBI foreign rum sales decided to switch to the bulk rum market, the Virgin Islands bulk rum production could cease, even thought no CBI country was producing bulk rum. Therefore, the Governor stated that the proposed formula in Notice No. 558 appears to be fair to all parties with respect to the return of excise taxes on foreign rum.

The comment from the Director of the Puerto Rico Federal Affairs Administration stated that Puerto Rico is opposed to the proposed formula for distribution of excise taxes on imported rum to Puerto Rico and the Virgin Islands as published in Notice No. 558 (50 FR 6203). The Director stated that, since the Caribbean Basin Economic Recovery Act provides little guidance

for the criteria that the Secretary of the Treasury should use when apportioning the excise tax on foreign rum between Puerto Rico and the United States Virgin Islands, general rules or reasonableness and practicality should be followed. These rules might be based either upon merit or upon need or some combination of the two. The Director stated, however, the proposed distribution formula adheres to neither of these principles.

The proposed distribution formula departs radically from the merit principle, according to the Director, by assuring both Puerto Rico and the U.S. Virgin Islands that each will receive its fiscal year 1980 through 1982 share of all rum excise tax collections (to the extent that this can be done without dipping into excise taxes on the other's rum) regardless of what might happen in its own industry. The proposed formula, according to the Director, is apparently based on the need to protect either Puerto Rico or the Virgin Islands against a fall in excise tax collections which it is assumed could only be caused by the competition of duty-free rum imports. Ignored is the detrimental effect on incentives caused by the fact that each party will receive a fixed percentage of the total excise tax regardless of what it might do to improve its own product or increase its sales. Furthermore, according to the Director, Puerto Rico assigned $75 million to the Economic Development Administration during the past five years for the promotion of rum in the U.S. market, $15.9 million of which was spent in the last year. The Director states that Puerto Rico's marketing efforts should be taken into consideration in analyzing the reasons for the change in the share of the rum market in the United States.

The Director of the Puerto Rico Federal Affairs Administration goes on to state that Puerto Rico's objection to the proposed formula is further strengthened based upon examination of the trend of Puerto Rico and Virgin Island's rum sales to the United States from 1980 through 1983, the last year before the duty was removed from Caribbean rum. The Director states that a case can be made that the effect of duty free competiton is best measured by the degree of departure in 1984 from the previous trends, not by degree of difference from the market share average for 1980, 1981, and 1982 which is the rationale for the proposed new distribution formula. The Director further states that his calculations indicate that Puerto Rico sold 18 percent less than projected in 1984 and the Virgin Islands sold 17.8 percent less than projected. Under the proposed formula, Puerto Rico would get .23 percent less in total excise tax than a straight line trend would project while the Virgin Islands would get 31.69 percent more. However, according to the Director, using the existing interim formula, Puerto Rico would get 2.35 percent more than projected and the Virgin Islands would get 10.6 percent more.

The Director states the existing interim distribution formula (stated in T.D. ATF–175) comes close to adhering to the pure principle of merit in that it distributes the foreign rum excise tax in the same proportion that Puerto Rico and the United States Virgin Islands had earned it on their own sales in the U.S. mainland from 1980 through 1982. It departs somewhat from the merit principle in that it does not provide for future adjustments in the proportion of foreign excise taxes based upon changes in relative sales to the mainland. However, the Director thinks this small departure from the merit principle can be justified because of the need to compensate, to a reasonable extent, the party whose sales might not keep pace with the other party. Consequently, the Director states that Puerto Rico is prepared to settle for the existing interim formula even though it might be more appropriate, and would certainly be more favorable to Puerto Rico, to use 1981, 1982, and 1983 for calculating the relative apportionment of the foreign rum excise tax instead of 1980, 1981, 1982.

In addition, should relative need be the main determining factor for the distribution of the excise taxes on U.S. rum imports, the Director states that Puerto Rico might be due at least 97 percent of foreign rum excise taxes because, of the total of 3,293,089 residents of Puerto Rico and the United States Virgin Islands (by the 1980 U.S. Census), 3,196,520 or 97.1 percent live in Puerto Rico. Furthermore, in 1980 the per capita personal income in Puerto Rico was $3,410 or only 62 percent of the per capita personal income of the U.S. Virgin Islands.

ATF Response to Comments

After careful evaluation of the comments from Puerto Rico and the United States Virgin Islands, ATF has decided to basically adopt the formula proposed in Notice No. 558 but with two minor modifications. The first change involves adding a provision to the formula which ensures that Puerto Rico will always receive at least 51 percent of the applicable excise taxes on rum imported into the United States from countries other than Puerto Rico and the Virgin Islands. This provision is necessary to ensure that Puerto Rico will always receive a fair share of the excise taxes on rum imported into the United States from countries other than Puerto Rico and the Virgin Islands even if the sale of Virgin Islands' rum to the United States drops significantly. Without this provision, it is conceivable that Puerto Rico's share of the excise taxes on foreign rum imports could drop to zero while the Virgin Islands' share could increase to 100 percent if the sale of Virgin Islands' rum to the United States dropped sharply. Since it is extremely difficult, if not impossible, to determine that percentage of a drop in rum sales to the United States is due to an increase in competition from other Caribbean Basin Countries and what percentage is due to other totally unrelated matters, ATF feels that a drop in sales of Virgin Islands' rum in the United States should not cause Puerto Rico's share of the excise tax revenue (from imported foreign rum sales in the United States) to drop below 51 percent. ATF feels that the Virgin Islands should be compensated to a degree for any drop in rum sales to the United States. However, we feel that Puerto Rico should always receive more than half of the excise tax revenue since Puerto Rico's share of the United States rum market is considerably larger than the Virgin Islands and thus more susceptible to increased competition from other Caribbean Basin countries.

The second change to the formula proposed in Notice No. 558 involves using only fiscal year 1983 in determining the base percentages for Puerto Rico and the Virgin Islands rather than using fiscal years 1980 through 1982. ATF feels that fiscal year 1983 is a more accurate indicator of Puerto Rico and the Virgin Islands' share of the United States rum market prior to passage of the Caribbean Basin Economic Recovery Act. We feel that the effects of that Act, which eliminated the duty on rum from certain designated Caribbean Basin countries, would not have been felt by Puerto Rico or the Virgin Islands until fiscal year 1984. Consequently, the base percentages for fiscal year 1983 are 87.626889 percent for Puerto Rico and 12.373111 percent for the Virgin Islands. These percentages are based on $245,744,274 in excise taxes collected on Puerto Rican rum brought into the United States during fiscal year 1983 in comparison to $34,699,637 in excise taxes collected on Virgin Islands rum brought into the United States during that same year.

As a result of the two changes made to the formula which was proposed in

Notice No. 558, Puerto Rico's share of the foreign rum excise tax revenue may go as high as 87.626889 percent but will never go below 51 percent. The Virgin Islands' share of the foreign rum excise tax revenue may go as high as 49 percent but will never go below 12.373111 percent. For a complete description, including examples, of the modified formula being adopted by this final rule, see the next section of this preamble.

ATF has decided to adopt this modified version of the formula proposed in Notice No. 558 because of the following reasons:

(1) The current, interim formula stated in 27 CFR 250.31 does not take into consideration a situation whereby Puerto Rico or the Virgin Islands loses more revenue that the other as a result of an increase in the sales of rum to the United States by Caribbean Basin countries other than Puerto Rico and the Virgin Islands. The formula adopted in this Treasury decision provides for a greater allocation of U.S. taxes collected on rum from areas other than Puerto Rico and the Virgin Islands to the possession (Puerto Rico or the Virgin Islands) whose relative share in the total U.S. rum market has decreased. The formula will take into account the total shipments of rum to the United States, the shipments of rum from Puerto Rico and the Virgin Islands, and the relative shares of rum brought into the U.S. from each of these two possessions prior to passage of the Caribbean Basin Economic Recovery ACT.

(2) The formula proposed in Notice No. 558 did not take into consideration the fact that some of the loss in market share of rum in the United States in future years might be due to reasons other than increased competition from other Caribbean Basin countries. Such other reasons could include lack of marketing effort by Puerto Rico or the Virgin Islands or a reduction in the quality of Puerto Rico or Virgin Islands' products. The formula adopted by this final rule ensures that Puerto Rico and the Virgin Islands receive a fair share of the excise tax revenue on foreign rum imported into the United States from countries other than Puerto Rico and the Virgin Islands, even through the sale of Puerto Rican or Virgin Islands' rum to the United States drops significantly.

The formula adopted in the regulations' portion of this final rule will remain in effect until further notice. Section 221 of the Caribbean Basin Economic Recovery Act states that the Secretary of the Treasury shall, from time to time, prescribe by regulation a formula for the division of the excise taxes on foreign rum imported into the United States between Puerto Rico and the Virgin Islands. Consequently, the formula which has been adopted by this final rule is subject to future change if it can be shown that the formula is unfair to either Puerto Rico and the Virgin Islands. If this is the case, then either Puerto Rico and the Virgin Islands may submit a petition to ATF requesting a change in the formula. The petition should include information thoroughly documenting how the formula is inequitable. The petition should also include suggestions on how to improve the formula. If ATF can verify the information submitted in such a petition, we will propose a new formula in a future notice of proposed rulemaking and will solicit public comments before making such a change.

The Formula

The formula adopted in this final rule will provide for an annual calculation using a permanent base distribution percentage and the previous fiscal year's figures for rum brought into the United States from all areas outside the United States. The permanent base distribution represents the amount of bulk and cased rum brought into the United States from Puerto Rico and the Virgin Islands during fiscal year 1983. (As used here, the fiscal year period is from October 1 through September 30.) Puerto Rico received $245,744,274 in excise taxes collected on its rum during that fiscal year, and the Virgin Islands received $34,699,637. Therefore, the base distribution percentage is 87.626889 percent for Puerto Rico and 12.373111 percent for the Virgin Islands.

The formula will apply only to the distribution of the excise taxes collected on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands. The excise taxes collected on rum brought into the United States from these two possessions will continue to be paid over to the Treasury of the possession in which the rum was produced.

The distribution percentages will be calculated once a year, taking into account each previous fiscal year's figures for the total amount of rum brought into the United States from all areas outside the United States, including Puerto Rico and the Virgin Islands. Since it takes several months for these statistics to be compiled, and several more months to prepare notification of the distribution percentage, it will be effective on March 1 of each year and continue until March 1 of the next year.

The distribution percentages for Puerto Rico and the Virgin Islands will be calculated as follows:

(1) Multiply the total excise taxes collected on rum imported or brought into the United States from all areas (including Puerto Rico and the Virgin Islands) during the previous fiscal year by .87626889 and .12373111 to determine the respective shares of excise taxes collected on the entire rum market that will be allotted to Puerto Rico and the Virgin Islands.

(2) Subtract from those respective shares the excise taxes collected on rum brought into the United States from Puerto Rico and the Virgin Islands, respectively, during the previous fiscal year to determine each possession's loss (or gain) in excise taxes in relation to the previous fiscal year's United States rum market. Then divide the results by the excise taxes collected on rum imported during the previous fiscal year from areas other than Puerto Rico and the Virgin Islands to determine the repective distribution percentage.

Notwithstanding the formula described above, the Virgin Islands' share of the excise taxes on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands shall not exceed 49 percent nor drop below 12.373111 percent. Puerto Rico's share of the excise taxes on rum imported from areas other than Puerto Rico and the Virgin Islands shall not exceed 87.626889 percent nor drop below 51 percent.

The formula prescribed in this section shall take effect on March 1, 1987. Prior to that date, Puerto Rico will continue to receive 86.4 percent and the Virgin Islands will continue to receive 13.6 percent of the eligible excise taxes on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands. To illustrate the use of this formula, the following examples are given

(Note:—The permanent base percentages, representing the excise tax revenues on rum from Puerto Rico and the Virgin Islands during fiscal year 1983, are 87.626889 percent ($245,744,274) for Puerto Rico and 12.373111 percent ($34,699,637) for the Virgin Islands.)

Example 1

In fiscal year 1986, excise taxes collected on rum brought into the United States from Puerto Rico and the Virgin Islands remain unchanged from the base period. Excise taxes collected on rum from other areas amounted to $10,000,000.

```
Step 1 - $245,744,274 (P.R.)
           34,699,637 (V.I.)
           10,000,000 (Other)
         $290,443,911

         $290,443,911          $290,443,911
         X  .87626889          X  .12373111
         $254,506,963          $ 35,936,948

Step 2 - P.R.  $254,506,963
             - 245,744,274
               $ 8,762,689  ÷  $10,000,000 = 87.6268%

         V.I.  $ 35,936,948
             - 34,699,637
               $ 1,237,311  ÷  $10,000,000 = 12.3732%
```

Result: During the period March 1, 1987 to March 1, 1988, the percentages for the distribution of excise taxes collected on rum imported from other areas would be 87.6268 percent to Puerto Rico and 12.3732 percent to the Virgin Islands.

Example 2

In fiscal year 1986, excise taxes collected on rum brought into the United States from Puerto Rico and the Virgin Islands dropped slightly, while the amount of excise taxes collected on rum imported from other areas rose.

```
Step 1 - $242,000,000 (P.R.)
           33,000,000 (V.I.)
           15,000,000 (Other)
         $290,000,000

         $290,000,000          $290,000,000
         X  .87626889          X  .12373111
         $254,117,978          $ 35,882,022

Step 2 - P.R.  $254,117,978
             - 242,000,000
               $ 12,117,978  ÷  $15,000,000 = 80.7865%

         V.I.  $ 35,882,022
             - 33,000,000
               $ 2,882,022  ÷  $15,000,000 = 19.2135%
```

Result: During the period March 1, 1987 to March 1, 1988, the percentages for the distribution of excise taxes collected on rum imported from other areas would be 80.7865 percent to Puerto Rico and 19.2135 percent to the Virgin Islands.

Example 3

In fiscal year 1986, excise taxes collected on rum brought into the United States from Puerto Rico rose, while the amount from the Virgin Islands dropped. Excise taxes collected on rum from other areas rose to $12,000,000.

```
Step 1 -  $247,000,000 (P.R.)
            33,000,000 (V.I.)
            12,000,000 (Other)
          $292,000,000

          $292,000,000              $292,000,000
          X   .87626889             X   .12373111
          $255,870,516              $ 36,129,484

Step 2 -  P.R. $255,870,516
               -247,000,000
               $   8,870,516  ÷  $12,000,000 = 73.9210%

          V.I. $ 36,129,484
               - 33,000,000
               $  3,129,484  ÷  $12,000,000 = 26.0790%
```

Result: During the period March 1, 1987 to March 1, 1988, the percentages for the distribution of excise taxes collected on rum imported from other areas would be 73.9210 percent to Puerto Rico and 26.0790 percent to the Virgin Islands.

Example 4

In fiscal year 1986, the excise taxes collected on rum brought into the United States from Puerto Rico rose dramatically, while the amount from the Virgin Islands dropped dramatically.

```
Step 1 -  $254,000,000 (P.R.)
            26,000,000 (V.I.)
            10,000,000 (Other)
          $290,000,000

          $290,000,000              $290,000,000
          X   .87626889             X   .12373111
          $254,117,978              $ 35,882,022

Step 2 -  P.R. $254,117,978
               -254,000,000
               $    117,978  ÷  $10,000,000 = 1.1798%

          V.I. $ 35,882,022
               - 26,000,000
               $  9,882,022  ÷  $10,000,000 = 98.8202%
```

Result: This formula results in Puerto Rico receiving 1.1798 percent and the Virgin Islands receiving 98.8202 percent of the excise taxes collected on rum imported from other areas. However, since a separate provision of the formula states that Puerto Rico's percentage of the excise taxes will not drop below 51 percent, the percentages for the distribution of excise taxes collected on rum imported from other areas would be 51 percent to Puerto Rico and 49 percent to the Virgin Islands.

Timing and Methods for Transferring Tax Collections

The timing and method of making the excise tax payments to Puerto Rico and the Virgin Islands will not change. Puerto Rico currently receives the excise taxes collected on its merchandise, and its share of the taxes collected on rum imported from other areas, on a monthly basis. The Virgin Islands receives fiscal year advances based on the estimated excise taxes to be collected on its merchandise brought into the United States. Actual amounts are subtracted from the advance monthly, and adjustments are made at the end of each fiscal year to reflect actual taxes collected on its merchandise that is brought into the United States. The Virgin Islands receives its shares of the taxes collected on rum imported from other areas on a monthly basis.

Regulatory Changes

In order for ATF to accurately determine the amount of rum brought into the United States from Puerto Rico, the Virgin Islands, and all other areas, it is necessary to require that distilled spirits plants importing bulk rum alter their reporting procedures to provide a more detailed breakdown between imported and domestic rum which is deposited into their processing accounts. This change in the reporting procedures requires amendments to the regulations in 27 CFR Part 19. The amendments to Part 19 concern adjustments to the reporting procedures on the Monthly Report of Processing Operations (ATF Form 5110.28), and Claim forms. ATF F 5110.28 is used by the Bureau for determining the amount of excise taxes collected on bulk distilled spirits brought into the United States that is paid over to the Treasuries of Puerto Rico and the Virgin Islands. It is also used for statistical purposes.

The changes being made to 27 CFR Part 19 by this Treasury decision were previously implemented by a temporary rule (T.D. ATF–175, 49 FR 20800) on May 16, 1984. However, subsequent to the effective date of the temporary rule, ATF published T.D. ATF–198 (50 FR 8456) which implemented the final all-in-bond regulations effective June 1, 1985. The final all-in-bond regulations completely revised 27 CFR Part 19. These final regulations were under review for an extended period of time and did not take into consideration the already revised regulations in T.D. ATF–175. It was decided at that time not to delay further the publication of the final all-in-bond regulations in order to incorporate the changes in T.D. ATF–175. Instead, ATF decided to publish a subsequent Treasury decision to reinstate these provisions. Thus, this Treasury decision reinstates the regulations in 27 CFR Part 19 which initially were implemented by T.D. ATF–175 but were not incorporated in T.D. ATF–198.

Other regulatory changes being adopted by this final rule include totally revising 27 CFR 250.31. This change is necessary due to the complete revision of the formula for dividing the excise taxes on rum from other countries between Puerto Rico and the Virgin Islands.

Executive Order 12291

It has been determined that this final rule is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the

economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have 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.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule 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 final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The requirements to collect information imposed by this final rule have been approved by the Office of Management and Budget under sec. 3507 of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35.

Disclosure

Copies of the temporary rule (T.D. ATF-175), Notice No. 558, and the comments received in response to Notice No. 558, are available for inspection during normal business hours at the following location: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Ariel Rios Federal Building, 12th Street and Pennsylvania Avenue, NW., Washington, DC

Drafting Information

The principal author of this document is Robert White, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 250

Administrative practice and procedure, Authority delegations, Beer, Customs duties and inspection, Electronic fund transfers, Excise taxes, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Transportation, U.S. possessions, Wine.

Issuance

PART 19—[AMENDED]

27 CFR Part 19—Distilled Spirits Plants—is amended to read as follows:

Paragraph 1

The authority citation for Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Paragraph 2

The table of contents in Part 19 is amended to revise the heading of § 19.778 to read as follows:

19.778 Receipt of Puerto Rican and Virgin Islands spirits and receipt of rum from all other areas.

Paragraph 3

Section 19.42 is amended to revise paragraphs (b) and (c) to read as follows:

§ 19.42 Claims on spirits returned to bonded premises.

* * * * *

(b) If the alcoholic content of the spirits contain at least 92 percent Puerto Rican or Virgin Islands rum, or if the spirits contain rum imported from any area other than Puerto Rico and the Virgin Islands, the claim shall show:

(1) Proof gallons of the finished product derived from Puerto Rican or Virgin Islands spirits, or derived from rum imported from any other area; and

(2) The amount of tax imposed by 26 U.S.C. 7652 or 26 U.S.C. 5001, determined at the time of withdrawal from bond, on the Puerto Rican or Virgin Islands spirits, or on the rum imported from any other area, contained in the product.

(c) Claims for credit or refund of tax shall be filed by the proprietor of the plant to which the spirits were returned within six months of the date of the return. No interest is allowed on any claims for refund or credit.

Paragraph 4

Section 19.778 is revised to read as follows:

§ 19.778 Receipt of Puerto Rican and Virgin Islands spirits and receipt of rum from all other areas.

(a) *Accounting.* Proprietors shall maintain separate accountings, in proof gallons, of Puerto Rican and Virgin Islands spirits having an alcoholic content of at least 92 percent rum, and of imported rum from all areas other than Puerto Rico and the Virgin Islands, received in the processing account for nonindustrial use. Receipts, for the purposes of these accountings, are limited to Puerto Rican and Virgin Islands spirits having an alcoholic content of at least 92 percent rum, and to imported rum from all areas other than Puerto Rico and the Virgin Islands, received in the processing account from the storage account of the same plant, from the storage account of another plant, and from customs custody.

(b) *Adjustment.* Each month proprietors shall determine the percentage of overall monthly processing gains or losses of spirits. The percentage of overall monthly processing gains or losses can be computed by netting the gains and losses on ATF Form 5110.28 (Part I). The proof gallons of Puerto Rican or Virgin Islands spirits (having an alcoholic content of at least 92 percent rum) and the proof gallons of imported rum from all areas other than Puerto Rico and the Virgin Islands, accounted for as received in processing during the month, shall be adjusted by the percentage of overall monthly processing gains or losses for that month.

(c) *Report.* As required by § 19.792, proprietors shall file monthly reports on ATF Form 5110.28. That report must show separately the adjusted proof gallons of Puerto Rican and Virgin Islands spirits having an alcoholic content of at least 92 percent rum, and of imported rum from all areas other than Puerto Rico and the Virgin Islands, received in processing.

PART 250—[AMENDED]

27 CFR Part 250—Liquors and Articles from Puerto Rico and the Virgin Islands—is amended to read as follows:

Paragraph 1

The authority citation for Part 250 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5141, 5205, 5207, 5232, 5301, 5314, 5555, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Paragraph 2

Section 250.31 is revised to read as follows:

§ 250.31 Formula.

(a) The amount of excise taxes collected on rum that is imported into the United States from areas other than Puerto Rico and the Virgin Islands shall be deposited into the Treasuries of Puerto Rico and the Virgin Islands at the rate prescribed in 26 U.S.C. 7652(f). The distribution of such amount between Puerto Rico and the Virgin Islands shall be computed by using a permanent base percentage, which represents the excise taxes collected on rum brought into the United States from Puerto Rico and the Virgin Islands during fiscal year 1983. This base percentage is 87.626889 percent for Puerto Rico and 12.373111 percent for the Virgin Islands. The formula shall be as follows:

(1) Multiply the total excise taxes collected on rum brought into the United States (including rum from Puerto Rico and the Virgin Islands) during the previous fiscal year (October 1–September 30) by the base percentages to determine the relative shares of the entire U.S. rum market that will be allotted to Puerto Rico and the Virgin Islands;

(2) Subtract each of these shares from the excise taxes collected on rum transported to the United States from Puerto Rico and the Virgin Islands, respectively, during the previous fiscal year to determine each possession's loss or gain in relation to the previous fiscal year's U.S. rum market. Divide these results by the excise taxes collected on rum imported during the previous fiscal year from areas other than Puerto Rico and the Virgin Islands.

(b) Notwithstanding the formula prescribed in paragraph (a) above, the Virgin Islands' share of the excise taxes on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands shall not exceed 49 percent nor drop below 12.373111 percent. Puerto Rico's share of the excise taxes on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands shall not exceed 87.62889 percent nor drop below 51 percent.

(c) The percentage for the distribution of the excise taxes collected on rum imported into the United States from areas other than Puerto Rico and the Virgin Islands, that will be paid over to the Treasuries of Puerto Rico and the Virgin Islands, shall be effective on March 1 of each year, and shall remain in effect until March 1 of the following year.

(d) The method for transferring the excise tax collections on rum imported from areas other than Puerto Rico and the Virgin Islands, into the Treasuries of Puerto Rico and the Virgin Islands shall be the same as the method used for transferring excise taxes into the Treasury of Puerto Rico on distilled spirits (with an alcohol content of at least 92 percent rum) brought into the United States from Puerto Rico.

(e) The formula prescribed in this section shall take effect on March 1, 1987. Prior to that date, Puerto Rico shall continue to receive 86.4 percent of the eligible excise taxes on rum imported from areas other than Puerto Rico and the Virgin Islands. The Virgin Islands shall continue to receive 13.6 percent of these eligible excise taxes until March 1, 1987.

(Aug. 16, 1954, Chapter 736, 68A Stat. 907, as amended (26 U.S.C. 7652))

Signed: June 13, 1986.

Stephen E. Higgins,

Director.

Approved: July 14, 1986.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 86-17440 Filed 8-4-86; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Parts 270, 275, 290, 295, and 296

[T.D. ATF-232]

Implementation of the Consolidated Omnibus Budget Reconciliation Act of 1985; Chewing Tobacco and Snuff

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements Title XIII, Subtitle B of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272, 100 Stat. 311).

This document amends regulations in 27 CFR Parts 270, 275, 290, 295, and 296 to provide for the taxation and regulation of chewing tobacco and snuff pursuant to Pub. L. 99-272. In addition, detailed rules for the grandfathering of existing manufacturers of chewing tobacco and snuff into the current regulatory framework for other tobacco products are provided. Also, this document provides a transitional rule for package markings for chewing tobacco and snuff which will allow manufacturers and importers to coordinate the package markings revisions required by Parts 270 and 275, with those required by the Federal Trade Commission pursuant to the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Pub. L. 99-252, 100 Stat. 30).

DATE: The effective date of the temporary regulations is retroactive to July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Nancy Cook or Clifford A. Mullen, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Room 6235, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226; (202) 566-7531.

SUPPLEMENTARY INFORMATION: This document contains temporary regulations implementing the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272). The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject. This document also provides a transitional rule for package markings for chewing tobacco and snuff which will allow manufacturers and importers to coordinate the package markings revisions required by Parts 270 and 275, with those required by the Federal Trade Commission pursuant to the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Pub. L. 99-252).

A notice of proposed rulemaking with respect to the final regulations appears elsewhere in this issue of the **Federal Register.**

Legislative Background

Under Pub. L. 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985, enacted April 7, 1986, chewing tobacco and snuff manufactured in or imported into the United States after June 30, 1986, are subject to tax at the rate of 8 cents and 24 cents per pound, respectively. The Act also contains a transitional rule which allows those currently engaged in the manufacture of chewing tobacco and snuff, and who make application for a permit prior to July 1, 1986, to continue to engage in such business pending final action on the application.

Smokeless tobacco products have not been subject to Federal excise tax since 1965. A previous excise tax on such products, imposed at a rate of 10 cents per pound, was repealed by the Excise Tax Reduction Act of 1965 (Pub. L. 89–44).

In addition, the act, by amending the definitions for "Tobacco products" and a "Manufacturer of tobacco products" to include smokeless tobacco, subjects manufacturers of such products to all the statutory and regulatory controls set forth in Chapter 52 of the Internal Revenue Code of 1954. These controls include taxpayment, permit qualification, bonding, record-keeping, and civil and criminal sanctions.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this document, because it was not required to be preceded by a general notice of proposed rulemaking under 5 U.S.C. 553, and because the revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any significant secondary or incidental effects, and any significant reporting, recordkeeping, or other compliance burdens flow directly from the statute.

Executive Order 12291

This document is not a major rule within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have 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.

Paperwork Reduction Act

The requirements to collect information proposed in this final rule have been submitted to the Office of Management and Budget and approved under sec. 3507 of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35.

List of Subjects

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Electronic fund transfer, Claims, Customs duties and inspection, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, U.S. possessions, Warehouses.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign-trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Vessels, Warehouses.

27 CFR Part 295

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers.

27 CFR Part 296

Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Seizures and forfeitures, Surety bonds.

Drafting Information

The principal authors of this document are Clifford A. Mullen and Nancy F. Cook of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

Effective Date

Because the provisions of section 13202 of Pub. L. 99–272 become effective on July 1, 1986 and require immediate taxpayer implementation and compliance, it is thereby found to be impractical and unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Authority and Issuance

Accordingly, ATF is proposing to amend Title 27 of the Code of Federal Regulations as follows:

PART 270—[AMENDED]

Sec. A. The regulations in 27 CFR Part 270 are amended as follows:

Paragraph 1. The authority citation for Part 270 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 18 U.S.C. 926, 22 U.S.C. 2778, 26 U.S.C. 5701, 5703, 5704, 5705, 5707, 5711, 5712, 5713, 5721, 5722, 5723, 5741, 5751, 5753, 5761, 5762, 6109, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 27 U.S.C. 205, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. The heading of Part 270 is revised to read as follows:

PART 270—MANUFACTURE OF TOBACCO PRODUCTS

Par. 3. The table of contents for Part 270 is amended by replacing the words "cigars and cigarettes" with the words "tobacco products" in the following section headings, §§ 270.1, 270.44, 270.61a, 270.183, and 270.313; the following new sections are added, §§ 270.25, 270.216, and 270.216a; replacing the words "cigars and cigarettes" with the words "tobacco products" in the undesignated center headings following Subpart H, § 270.217, § 270.236, § 270.287; and by replacing the words "cigars and cigarettes" with the words "tobacco products" and replacing the word "tobacco" with the word "materials in § 270.252 to read as follows:

§ 270.1 [Amended]

Par. 4. Section 270.1 is amended by replacing the words "cigars and cigarettes" with the words "tobacco products" wherever they appear in the heading and text.

Par. 5. Section 270.11 is amended by adding the definition for "Chewing Tobacco" to read as follows:

§ 270.11 [Amended]

* * * * *

Chewing tobacco. Any leaf tobacco that is not intended to be smoked.

* * * * *

Par. 6. Section 270.11 is amended by revising the definition for "Determined or determination" to read as follows: "When used with respect to the tax on tobacco products, determined or determination means that the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes, chewing tobacco, snuff) of tobacco products and wholesale price of large cigars to be removed subject to tax have been established as prescribed by this part so that the tax payable with respect thereto may be calculated."

Par. 7. Section 270.11 is amended by revising the definition for "Export warehouse" to read as follows: "A bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States."

Par. 8. Section 270.11 is amended by revising the definition of "In bond" to read as follows:

"The status of tobacco products and cigarette papers and tubes, which come within the coverage of a bond securing the payment of internal revenue taxes imposed by 26 U.S.C. 5701 or 7652, and in respect to which such taxes have not been determined as provided by regulations in this chapter, including (a) such articles in a factory, (b) such articles removed, transferred, or released, pursuant to 26 U.S.C. 5704, and with respect to which relief from the tax liability has not occurred, and (c) such articles on which the tax has been determined, or with respect to which relief from the tax liability has occurred, which have been returned to the coverage of a bond."

Par. 9. Section 270.11 is amended by revising the definition of "Manufacturer of tobacco products" to read as follows:

"Any person who manufactures cigars, cigarettes, or smokeless tobacco, except that such term shall not include (a) a person who produces cigars, cigarettes, or smokeless tobacco solely for his own personal consumption or use; or (b) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse."

Par. 10. Section 270.11 is amended by revising the definition of "Removal or remove" to read as follows: "The removal of tobacco products from the factory or release from customs custody, including the smuggling or other unlawful importation of such articles into the United States."

Par. 11. Section 270.11 is amended by adding the definition of "Smokeless tobacco" which reads as follows:

Smokeless tobacco. Any snuff or chewing tobacco.

Par. 12. Section 270.11 is amended by adding the definition of "Snuff" to read as follows:

Snuff. Any finely cut, ground, or powdered tobacco that is not intended to be smoked.

Par. 13. Section 270.11 is amended by revising the definition of "Tobacco products" to read as follows:

"Cigars, cigarettes, and smokeless tobacco. The term does not include smoking tobacco."

Par. 14. Section 270.25 is added and reads as follows:

§ 270.25 Smokeless tobacco tax rates.

On smokeless tobacco, manufactured in or imported into the United States, the following tax rates are imposed by law:

(a) *Snuff.* 24 cents per pound and a proportional tax at the like rate on all fractional parts of a pound.

(b) *Chewing tobacco.* 8 cents per pound and a proportional tax at the like rate on all fractional parts of a pound. (Pub. L. 99–272, 26 U.S.C. 5701)

§ 270.26 [Amended]

Par. 15. Section 270.26 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 260.27 [Amended]

Par. 16. Section 270.27 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.41 [Amended]

Par. 17. Section 270.41 (c) is amended to change the address of the ATF Distribution Center to 7943 Angus Court, Springfield, Virginia 22153.

§ 270.42 [Amended]

Par. 18. Section 270.42 is amended by removing the words "cigars or cigarettes" and replacing them with the words "tobacco products".

§ 270.44 [Amended]

Par. 19. Section 270.44 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.61 [Amended]

Par. 20. Section 270.61 is amended by removing the words "cigars or cigarettes" and replacing them with the words "tobacco products".

Par. 21. Section 270.61a is added and reads as follows:

§ 270.61a Transitional rule.

Any person who—

(a) On April 7, 1986, was engaged in business as a manufacturer of smokeless tobacco, and

(b) Before July 1, 1986, submits an application, as provided in this Part, to engage in such business, may, continue to engage in such business pending final action on such application. Pending such final action, all provisions of Chapter 52 of the Internal Revenue Code of 1954 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit to manufacture smokeless tobacco under such chapter 52.

§ 270.69 [Amended]

Par. 22. Section 270.69(c) is amended by removing the words "cigars and cigarettes" and replacing them with the words "tobacco products".

Par. 23. Section 270.72 is revised to read as follows:

§ 270.72 Use of factory premises.

Unless otherwise authorized by the Director as provided in § 270.47, the factory premises shall be used exclusively for the purposes of manufacturing and storing tobacco products; storing materials, equipment, and supplies related thereto or used or

useful in the conduct of the business; and carrying on activities in connection with the business of the manufacturer: Proviced, That tobacco products manufacturers who maintain adequate records showing the date and total quantity in pounds, of the tobacco received, shipped or delivered, lost, and destroyed, in respect to the manufacture and storage of smoking tobacco (as well as tobacco products) may continue such operations on the tobacco products factory premises, without application for authorization as prescribed in § 270.47.

§ 270.104 [Amended]

Par. 24. Section 270.104 is amended by removing the words "cigars and cigarettes" and replacing them with the words "tobacco products".

Par. 25. Section 270.133 is revised to read as follows:

§ 270.133 Amount of individual bond.

The amount of the bond of a manufacturer of tobacco products shall be not less than the total amount of tax liability on all tobacco products manufactured in his factory, received in bond from other factories and from export warehouses, and released to him in bond from customs custody, during any calendar month. Where the amount of any bond is no longer sufficient and the bond is in less than the maximum amount, the manufacturer shall immediately file a strengthening or superseding bond as required by this subpart. The amount of any such bond (or the total amount including strengthening bonds, if any) need not exceed $250,000 for a manufacturer producing or receiving cigarettes in bond; need not exceed $150,000 for a manufacturer producing or receiving cigars or smokeless tobacco in bond; and need not exceed $250,000 for a manufacturer producing or receiving, in any combination, tobacco products in bond. The bond of a manufacturer of tobacco products shall in no case be less than $1,000.

Par. 26. The undesignated centerheading following the heading for Subpart H is revised to read "Determination and Payment of Taxes on Tobacco Products".

§ 270.161 [Amended]

Par. 27. Section 270.161 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.162 [Amended]

Par. 28. Section 270.162 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products", and removing paragraph (c) which contains an obsolete transitional rule.

Par. 29. Section 270.162 is amended by removing the word "and" from the end of paragraph (b)(4), by redesignating paragraph (b)(5) as (b)(6), and adding a new paragraph (b)(5) to read as follows:

(b)(5) the amount of chewing tobacco and snuff removed subject to tax during the return period, and

§ 270.165a [Amended]

Par. 30. Section 270.165a is amended by removing the words "cigars, cigarettes, cigarette papers, and cigarette tubes" wherever they appear and replacing them with the words "tobacco products, cigarette papers, and cigarette tubes" and by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.166 [Amended]

Par. 31. Section 270.166 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.167 [Amended]

Par. 32. Section 270.167 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.168 [Amended]

Par. 33. Section 270.168 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products."

Par. 34. Section 270.182 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 270.182 Record of tobacco.

The record of a manufacturer of tobacco products shall show the date and total quantity in pounds, of all tobacco other than tobacco products:

(a) Received (including tobacco resulting from reduction of cigars, cigarettes, and unpackaging of smokeless tobacco), together with the name and address of the person from whom received;

* * * * *

§ 270.183 [Amended]

Par. 35. The heading of section 270.183 is amended by removing the words "cigars and cigarettes" and replacing them with the words "tobacco products" and the introductory text is revised to read as follows:

"The record of a manufacturer of tobacco products shall show the date and total quantities of all tobacco products, by kind (small cigars-large cigars; small cigarettes-large cigarettes; chewing tobacco-snuff):"

Par. 36. Section 270.183(g)(6) is amended by removing the word "tobacco" and replacing it with the word "materials".

§ 270.184 [Amended]

Par. 37. Section 270.184 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.186 [Amended]

Par. 38. Section 270.186 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.201 [Amended]

Par. 39. Section 270.201 is amended by removing the words "cigars, cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.202 [Amended]

Par. 40. Section 270.202 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products"; and by adding the parenthetical "(Approved by the Office of Management and Budget under Control No. 1512–0358)" at the end of the section.

§ 270.211 [Amended]

Par. 41. Section 270.211 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products."

§ 270.212 [Amended]

Par. 42. Section 270.212 is amended by removing the words "cigars or cigarettes" and replacing them with the words "tobacco products" and by removing the word "both" in the fourth sentence.

Par. 43. Section 270.216 is added to read as follows:

§ 270.216 Notice for smokeless tobacco.

Every package of chewing tobacco or snuff shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "chewing tobacco" or

"snuff", and a clear statement of the actual pounds and ounces of the product contained therein.

Par. 44. Section 270.216a is added to read as follows:

§ 270.216a Transitional rule.

Notwithstanding the provisions of § 270.212 and 270.216 as they relate to smokeless tobacco, manufacturers of smokeless tobacco may continue to use packaging in use prior to July 1, 1986 until February 27, 1987.

§ 270.217 [Amended]

Par. 45. Section 270.217 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

Par. 46. The undesignated centerheading following § 270.217 is revised to read "Exemption From Taxes on Tobacco Products."

Par. 47. Section 270.231 is revised to read as follows:

§ 270.231 Consumption by employees.

A manufacturer of tobacco products may gratuitously furnish tobacco products, without determination and payment of tax, for personal consumption by employees in the factory in such quantities as desired. Each employee may also be gratuitously furnished by the manufacturer, for off-factory personal consumption, not more than 5 large cigars or cigarettes, or 20 small cigars or cigarettes, or 1 retail package of chewing tobacco or snuff, or a proportionate quantity of each tobacco product, without determination and payment of tax, on each day the employee is at work. For the purposes of this section, the term "employee" shall mean those persons whose duties require their presence in the factory of whose duties relate to the manufacture, distribution, or sale of tobacco products and who receive compensation from the manufacturer, or a parent, subsidiary, or auxiliary company or corporation of the manufacturer. Such product furnished for off-factory consumption shall be furnished to the employee within the factory and taken from the factory by the employee on the day for which furnished. Employees shall not sell, offer for sale, or give away products so furnished.

§ 270.232 [Amended]

Par. 48. Section 270.232 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products."

§ 270.233 [Amended]

Par. 49. Section 270.233 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.234 [Amended]

Par. 50. Section 270.234 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.235 [Amended]

Par. 51. Section 270.235 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.236 [Amended]

Par. 52. Section 270.236 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

Par. 53. The undesignated centerheading following § 270.236 is revised to read "Other Provisions Relating to Tobacco Products."

§ 270.251 [Amended]

Par. 54. Section 270.251 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products."

Par. 55. Section 270.252 is revised to read as follows:

§ 270.252 Reduction of tobacco products to materials.

A manufacturer may reduce tobacco products to materials without supervision. If the tobacco products have been entered in the factory record as manufactured or received, and entry shall be made in such record of the kind and quantity of cigars, cigarettes, or smokeless tobacco reduced to materials and of the quantity of tobacco resulting from the reduction. Where the manufacturer intends to file claims for credit allowance, or refund of tax on such tobacco products, he shall comply with the provisions of §§ 270.311 and 270.313.

§ 270.253 [Amended]

Par. 56. Section 270.253 is amended by removing the words "cigars and /or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.254 [Amended]

Par. 57. Section 270.254 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products."

Par. 58. Section 270.255 is revised to read as follows:

§ 270.255 Shortages and overages in inventory.

Whenever a manufacturer of tobacco products makes a physical inventory of packaged tobacco products in bond, either as part of normal operations or when required by an ATF officer, and such inventory discloses a shortage or overage in such products by kind as recorded and reported (i.e., small cigarettes, large cigarettes, small cigars, large cigars, chewing tobacco, or snuff), the manufacturer shall enter such shortage or overage in the records required by § 270.183. Shortages or overages in inventories made at different times may not be used to offset each other, but shall be recorded and reported separately. Unless the manufacturer establishes that a shortage was not caused by a removal subject to the tax the manufacturer shall determine the tax on any shortage, make an adjustment in Schedule A of his next semimonthly tax return and pay the tax thereon. If, after paying the tax on a shortage, the manufacturer satisfactorily establishes that the shortage was not caused by a removal subject to tax, then such payment would be an overpayment of tax which the manufacturer may recover as provided in § 270.286. Where the manufacturer can establish prior to paying the tax on a shortage, that the shortage was not the result of a removal subject to tax he shall submit an explanation of such shortage with his report for the month in which the shortage was disclosed and, if appropriate, he may file claim for remission of tax liability as provided in § 270.287. When an overage is disclosed which the manufacturer can explain, he shall include such explanation in his monthly report and refund of any overpayment may be recovered as provided in § 270.286. Whenever a physical inventory discloses a shortage or overage of tobacco products which have not been packaged the manufacturer shall appropriately enter such shortage or overage in his records and shall, at the time required by the Regional Director (Compliance), furnish an explanation in the form of a claim for remission of tax liability as provided in

§ 270.287. The manufacturer shall pay the tax on any shortage or portion thereof for which he is unable to furnish an explanation acceptable to the Regional Director (Compliance).

§ 270.281 [Amended]

Par. 59. Section 270.281 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.282 [Amended]

Par. 60. Section 270.282 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.283 [Amended]

Par. 61. Section 270.283 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.284 [Amended]

Par. 62. Section 270.284 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.286 [Amended]

Par. 63. Section 270.286 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.287 [Amended]

Par. 64. Section 270.287 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

Par. 65. The undesignated centerheading following § 270.287 is revised to read "Tobacco Products Lost or Destroyed".

§ 270.301 [Amended]

Par. 66. Section 270.301 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products".

Par. 67. The undesignated centerheading following §270.301 is revised to read "Tobacco Products Withdrawn From the Market."

§270.311 [Amended]

Par. 68. Section 270.311(a) is amended by removing the first sentence and replacing it with the following sentence: "Where tobacco products are withdrawn from the market and the manufacturer desires to file claim under the provisions of § 270.282 or § 270.283, he shall assemble the products in or adjacent to a factory if they are to be returned to bond or at any suitable place if they are to be destroyed or reduced to materials."

§ 270.312 [Amended]

Par. 69. Section 270.312 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 270.313 [Amended]

Par. 70. In 270.313 the heading is revised to read "Disposition of tobacco products and schedule" and the text is amended by removing the words "cigars and/or cigarettes" anywhere they appear and replacing them with the words "tobacco products".

§ 270.331 [Amended]

Par. 71. Section 270.331 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

Sec. B. The regulations in 27 CFR Part 275 are amended as follows:

Authority and Issuance

27 CFR Part 275 is amended as follows:

PART 275—[AMENDED]

Paragraph 1. The authority citation for Part 275 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5762, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7652(a), 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. The table of contents to Part 275 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products" in the following section headings, §§ 275.1, 275.25, 275.62, 275.174 and the titles of Subpart F and Subpart G; the following new sections are added, §§ 275.33, 275.72, and 275.72a; replacing the words "cigars, cigarettes, and replacing them with the words "tobacco products" in the undesignated centerheadings following §§ 275.81, 275.101, 275.108, 275.129, 275.163 and 275.165; and by replacing the words "Destruction or reduction to tobacco" with the words "Reduction of tobacco products to materials" in §§ 275.170 and 275.171 to read as follows:

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Subpart A—Scope of Regulations

Sec.

§ 275.1 [Amended]

Par. 3. Section 275.1 ia amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.11 [Amended]

Par. 4. Section 275.11 is amended by revising the definitions of bonded manufacturer, computation or computed, determined or determination, factory, importer, manufacturer of tobacco products, package, removal or remove, tobacco products, and by adding new definitions for chewing tobacco, smokeless tobacco and snuff to read as follows:

Bonded manufacturer. "A manufacturer of tobacco products in Puerto Rico who has an approved bond, in accodance with the provisions of this part, authorizing him to defer the payment in Puerto Rico on the internal revenue tax imposed on such products by 26 U.S.C. 7652(a) as provided in this part.

* * * * *

Chewing Tobacco. "Any leaf tobacco that is not intended to be smoked."

* * * * *

Computation or computed. "When used with respect to the tax on tobacco products of Puerto Rican manufacture, computation or computed shall mean that the bonded manufacturer has ascertained the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes, chewing tobacco, and snuff) of tobacco products and wholesale price of large cigars being shipped to the United States; that the payment, in Puerto Rico, of the tax on such products to be deferred under Subpart G of this part; that the tax imposed on such products by 26 U.S.C. 7652(a) has been calculated; that the bonded manufacturer has executed an agreement to pay the internal revenue tax which will become due with respect to such products, as provided in this part; and that an ATF officer has verified and executed a certification of such calculation.

Determined or determination. "When used with respect to the internal revenue tax on tobacco products and cigarette papers and tubes, determined or determination shall mean that the quantity and kind (small cigars, large cigars, small cigarettes, large cigarettes, chewing tobacco, snuff) of tobacco products and wholesale price of large cigars, or the number of books or sets of cigarette papers of each different numerical content, or the number of cigarette tubes, to be removed subject to internal revenue tax, has been established as prescribed by this part so that the internal revenue tax payable with respect thereto may be calculated.

* * * * *

Factory. "The premises of a manufacturer of tobacco products or cigarette papers or tubes in which he carries on such business."

* * * * *

Importer. "Any person in the United States to whom non-taxpaid tobacco products or cigarette papers or tubes manufactured in a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are shipped or consigned; any person who removes cigars for sale or consumption in the United States from a Customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully brings tobacco products or cigarette papers or tubes into the United States.

* * * * *

Manufacturer of tobacco products. "Any person who manufactures cigars, cigarettes, or smokeless tobacco, except that such term shall not include (a) a person who produces tobacco products solely for his own personal consumption or use; or (b) a proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse."

Package. "The container in which tobacco products or cigarette papers or tubes are put up by the manufacturer or the importer for delivery to the consumer."

* * * * *

Removal or remove. "The removal of tobacco products or cigarette papers or tubes from the factory or release from customs custody, including the smuggling or other unlawful importation of such articles into the United States."

* * * * *

Smokeless tobacco. "Any chewing tobacco or snuff."

Snuff. "Any finely cut, ground, or powdered tobacco that is not intended to be smoked."

Tobacco products. "Cigars, cigarettes, and smokeless tobacco. The term does not include smoking tobacco."

* * * * *

§ 275.21 [Amended]

Par. 5. Section 275.21(c) is amended to change the address of the ATF Distribution Center to: 7943 Angus Court, Springfield, Virginia 22153.

§ 275.23 [Amended]

Par. 6. Section 275.23 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.25 [Amended]

Par. 7. Section 275.25 the heading is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products" and the text is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

Par. 8. Section 275.33 is added and reads as follows:

§ 275.33 Smokeless tobacco.

On smokeless tobacco, manufactured in or imported into the United States, the following tax rates are imposed by law:

(a) *Snuff.* 24 cents per pound and a proportional tax at the like rate on all fractional parts of a pound.

(b) *Chewing tobacco.* 8 cents per pound and a proportional tax at the like rate on all fractional parts of a pound. (Pub. L. 99–272, 100 Stat. 82, 311; 26 U.S.C. 5701)

§ 275.40 [Amended]

Par. 9. Section 275.40 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.41 [Amended]

Par. 10. Section 275.41 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.50 [Amended]

Par. 11. Section 275.50 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.60 [Amended]

Par. 12. Section 275.60 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.62 [Amended]

Par. 13. Section 275.62 the heading and text are amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.63 [Amended]

Par. 14. Section 275.63 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.71 [Amended]

Par. 15. Section 275.71 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing

them with the words "tobacco products".

Par. 16. Section 275.72 is added and reads as follows:

§ 275.72 Notice for smokeless tobacco.

Every package of chewing tobacco or snuff shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "chewing tobacco" or "snuff", and a clear statement of the actual pounds and ounces of the product contained therein.

Par. 17. Section 275.72a is added and reads as follows:

§ 275.72a Transitional rule.

Notwithstanding the provisions of § 275.72 as they related to smokeless tobacco, importers of smokeless tobacco may continue to use packaging in use prior to July 1, 1986 until February 27, 1987.

§ 275.75 [Amended]

Par. 18. Section 275.75 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

Par. 19. The heading of Subpart F is revised to read as follows:

Subpart F—Tobacco Products and Cigarette Papers and Tubes, Imported Into or Returned to the United States

§ 275.81 [Amended]

Par. 20. Section 275.81 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

Par. 21. Section 275.81 is amended by adding a new paragraph (c)(5) to read as follows:

(c)(5) *For smokeless tobacco:* The importer will show whether the product is chewing tobacco or snuff, the number of pounds and ounces, the rate of tax and the tax due.

Par. 22. The undesignated center heading following § 275.81 is revised to read "Release From Customs Custody of Tobacco Products and Cigarette Papers and Tubes Without Payment of Tax or Certain Duty."

§ 275.85 [Amended]

Par. 23. Section 275.85, the first sentence of text, is amended to read "Tobacco products manufactured in a foreign country, the Virgin Islands, or a possession of the United States may be released by the district director of Customs from Customs custody, without payment of internal revenue tax, for transfer to the factory of a manufacturer of tobacco products under the bond of such manufacturer."

Par. 24. Section 275.85 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.85a [Amended]

Par. 25. Section 275.85a, the first sentence, is amended by removing the words "cigars and cigarettes" and replacing them with the words "tobacco products."

Par. 26. Section 275.85a is amended by removing the words "cigars, cigarettes," in the third sentence and replacing them with the words "tobacco products".

§ 275.86 [Amended]

Par. 27. Section 275.86 is amended by removing the words "cigars, cigarettes," and replacing them wherever they appear with the words "tobacco products'.

Par. 28. The heading of Subpart G is revised to read as follows:

Subpart G—Puerto Rican Tobacco Products and Cigarette Papers and Tubes, Brought Into the United States

§ 275.101 [Amended]

Par. 29. Section 275.101 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products".

Par. 30. Section 275.101 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

Par. 31. The undesignated centerheading following § 275.101 is revised to read "Prepayment of Tax in Puerto Rico on Tobacco Products and Cigarette Papers and Tubes".

Par. 32. Section 275.105 is revised to read as follows:

§ 275.105 Prepayment of tax.

To prepay, in Puerto Rico, the internal revenue tax imposed by 26 U.S.C. 7652(a), on tobacco products and cigarette papers and tubes of Puerto Rican manufacture which are to be shipped to the United States, the shipper shall file, or cause to be filed, with the Officer-in-Charge, a tax return, Form 3073, in triplicate, with full remittance of tax which will become due on such tobacco products and cigarette papers and tubes. The Officer-in Charge will present a receipted copy of the return to the person filing the return and paying the tax, retain one copy, and forward the remaining copy to the Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms, New York, NY. The person who filed the return and prepaid the tax shall present the receipted copy of the return to the ATF officer assigned by the Chief, Puerto Rico Operations, to inspect the tobacco products and cigarette papers and tubes to be shipped to the United States. Such officer will endorse the receipted copy of the return to show release of the tobacco products and cigarette papers and tubes, or, if less than the quantity of tobacco products and cigarette papers and tubes covered by the return is released, to show (a) the numbers of small cigarettes, large cigarettes, and small cigars, (b) the number and total wholesale price of large cigars with a wholesale price of not more than $235.294 per thousand, (c) the number of large cigars with a wholesale price of more than $235.294 per thousand, (d) the number of books or sets of cigarette papers of each different numerical content, (e) the number of cigarette tubes, in fact released, and (f) the pounds of chewing tobacco and snuff and will return such copy to the taxpayer.

§ 275.106 [Amended]

Par. 33. Section 275.106 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.107 [Amended]

Par. 34. Section 275.107 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products", by deleting the word "and" at the end of paragraph (d), and inserting "and" after paragraph (e), by removing the period at the end of paragraph (e), and by adding a new paragraph (f) to read as follows:

"(f) the pounds and ounces of chewing tobacco and snuff."

Par. 35. The undesignated centerheading following § 275.107 is revised to read "Deferred Payment of Tax in Puerto Rico on Tobacco Products."

§ 275.109 [Amended]

Par. 36. Section 275.109 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 275.110 [Amended]

Par. 37. Section 275.110 is amended by removing the words "cigars and cigarettes" wherever they appear and

replacing them with the words "tobacco products" and by revising paragraph (d), redesignating paragraph (e) as (f), and adding a new paragraph (e) to read as follows:

"(d) the pounds and ounces of chewing tobacco or snuff to be shipped, (e) the amount of the tax to be paid on such products under the provisions of this subpart, and"

§ 275.111 [Amended]

Par. 38. Section 275.111 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 275.112 [Amended]

Par. 39. Section 275.112 is amended by removing the words "cigars and cigarettes" in the first sentence and replacing them with the words "tobacco products"; by redesignating paragraph (e) as paragraph (f); by adding a new paragraph (e); and by removing the "and" at the end of paragraph (d) to read as follows:

(e) the pounds and ounces of smokeless tobacco upon which tax has been computed, and

§ 275.115a [Amended]

Par. 40. Section 275.115a is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.116 [Amended]

Par. 41. Section 275.116 is amended by removing the words "cigars or cigarettes" and replacing them with the words "tobacco products".

§ 275.117 [Amended]

Par. 42. Section 275.117 is amended by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products"; by removing the word "and" at the end of paragraph (b); by adding "and" before the period at the end of paragraph (c); and by adding a new paragraph (d) to read as follows: "(d) pounds and ounces of chewing tobacco and snuff."

§ 275.120 [Amended]

Par. 43. Section 275.120 is amended by removing the words "cigars and cigarettes" and replacing them with the words "tobacco products".

Par. 44. Section 275.121 is revised to read as follows:

§ 275.121 Amount of Bond.

In order that tobacco products may be shipped to the United States on computation of tax under the provisions of this subpart, the total amount of the bond or bonds shall at all times be in an amount not less than the amount of unpaid tax chargeable at any one time against the bond: *Provided,* That the amount of any such bond need not exceed $250,000 where payment of tax on cigarettes, or on any combination of tobacco products is deferred; and need not exceed $150,000 where the tax on cigars or smokeless tobacco is deferred. The amount of the bond shall in no case be less than $1,000. Where the amount of a bonded manufacturer's bond is less than the maximum prescribed, the bonded manufacturer shall maintain a running account accurately reflecting all outstanding taxes with which his bond is chargeable. He shall charge such account with the amount of tax he agreed to pay on Forms 2987 and shall credit the account for the amount he paid with his return, Form 2988, at the time he files such return.

§ 275.125 [Amended]

Par. 45. Section 275.125 is amended by removing the words "cigars and cigarettes" and replacing them with the words "tobacco products".

Par. 46. The undesignated center heading following § 275.129 is revised to read "Release of Puerto Rican Tobacco Products and Cigarette Papers and Tubes From Customs Custody, Without Payment of Tax".

§ 275.135 [Amended]

Par. 47. Section 275.135 is amended by removing the words "cigars, cigarettes" and replacing them with the words "tobacco products".

§ 275.136 [Amended]

Par. 48. Section 275.136 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.137 [Amended]

Par. 49. Section 275.137 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.138 [Amended]

Par. 50. Section 275.138 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.139 [Amended]

Par. 51. Section 275.139 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products" and by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products" and by revising paragraph (a) to read "(a) Date, quantity, kind of cigars, cigarettes, and smokeless tobacco (number of small cigars—large cigars; number of small cigarettes—large cigarettes; pounds and ounces of chewing tobacco—snuff)."

§ 275.140 [Amended]

Par. 52. Section 275.140 is amended by removing the words "cigars and/or cigarettes" wherever they appear and replacing them with the words "tobacco products" and by removing the words "cigars, cigarettes" and replacing them with the words "tobacco products".

§ 275.141 [Amended]

Par. 53. Section 275.141 is amended by removing the words "cigars, cigarettes," and by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 275.161 [Amended]

Par. 54. Section 275.161 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.162 [Amended]

Par. 55. Section 275.162 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.163 [Amended]

Par. 56. Section 275.163 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

Par. 57. The undesignated centerheading following § 275.163 is revised to read "Tobacco Products and Cigarette Papers and Tubes Lost or Destroyed".

§ 275.165 [Amended]

Par. 58. Section 275.165 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

Par. 59. The undesignated centerheading following § 275.165 is revised to read "Tobacco Products and Cigarette Papers and Tubes Withdrawn From the Market".

§ 275.170 [Amended]

Par. 60. Section 275.170 the heading and text are amended by removing the words "reduction to tobacco" wherever they appear and replacing them with the words "reduction to materials" and by

removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.171 [Amended]

Par. 61. Section 275.171 the heading and text are amended by removing the words "reduction to tobacco" wherever they appear and replacing them with the words "reduction to materials" and by removing the words "cigars and cigarettes" wherever they appear and replacing them with the words "tobacco products" and by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

§ 275.172 [Amended]

Par. 62. Section 275.172 is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 275.173 [Amended]

Par. 63. Section 275.173 is amended by removing the words "cigars, cigarettes" wherever they appear and replacing them with the words "tobacco products".

§ 275.174 [Amended]

Par. 64. Section 275.174 is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products" and by removing the words "cigars and cigarettes" and replacing them with the words "tobacco products" and by removing the words "to tobacco" and replacing them with the words "to materials".

Sec. C. The regulations in 27 CFR Part 290 are amended as follows:

Authority and Issuance

27 CFR Part 290 is amended as follows:

Paragraph 1. The authority citation for Part 290 is revised to read as follows:

Authority: 5 U.S.C. 552(c), 18 U.S.C. 1301, 19 U.S.C. 81c, 1317, 1622, 26 U.S.C. 5703, 5704, 5705, 5711, 5712, 5713, 5721, 5722, 5723, 5741, 5751, 6402, 6404, 6423, 7212, 7342, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306, 44 U.S.C. 3504(h).

Par. 2. The heading of Part 290 is revised to read as follows:

PART 290—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

Par. 3. The table of sections for Part 290 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products" in the following headings §§ 290.1, 290.62, 290.63, 290.64, 290.65, Subpart J, 290.213, 290.225, and 290.226 to read as follows:

Subpart A—Scope of Regulations

Sec.

290.1 Exportation of tobacco products and cigarette papers and tubes, without payment of tax, or with drawback of tax.

* * * * *

290.62 Restrictions on deliveries of tobacco products and cigarette papers and tubes to vessels and aircraft as supplies.

* * * * *

290.63 Restrictions on disposal of tobacco products and cigarette papers and tubes on vessels and aircraft.

* * * * *

290.64 Responsibility for delivery or exportation of tobacco products and cigarette papers and tubes.

* * * * *

290.65 Liability for tax on tobacco products and cigarette papers and tubes.

* * * * *

Subpart J—Removal of Shipments of Tobacco Products and Cigarette Papers and Tubes by Manufacturers and Export Warehouse Proprietors

* * * * *

290.213 Destruction of tobacco products and cigarette papers and tubes.

* * * * *

290.225 Delivery of tobacco products or cigarette papers or tubes for export other than by parcel post.

* * * * *

290.226 Delivery of tobacco products and cigarette papers and tubes for export by parcel post.

* * * * *

§ 290.1 [Amended]

Par. 4. Section 290.1 the heading and text are amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.2 [Amended]

Par. 5. Section 290.2 is amended to change the address of the ATF Distribution Center to 7943 Angus Court, Springfield, Virginia 22153.

[§ 290.11 [Amended]

Par. 6. Section 290.11 is amended by adding the definition for "Chewing tobacco" to read as follows:

Chewing tobacco. Any leaf tobacco that is not intended to be smoked.

Par. 7. In § 290.11 the definition for "Exportation or export" is amended by removing the words "cigars, cigarettes," wherever they appear and replacing them with the words "tobacco products".

Par. 8. In § 290.11 the definition for "Export warehouse" is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

Par. 9. In § 290.11 the definition for "Factory" is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

Par. 10. In § 290.11 the definition for "In bond" is amended by removing the words "cigars, cigarettes," and replacing them with the words "tobacco products".

Par. 11. Section 290.11 is amended by revising the definition for "Manufacturer of tobacco products" to read as follows:

"Any person who manufactures cigars, cigarettes, or smokeless tobacco, except that such term shall not include (a) a person who produces cigars, cigarettes, or smokeless tobacco solely for his own personal consumption or use; or (b) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse."

Par. 12. Section 290.11 is amended by revising the definition for "Package" to read as follows: "The container in which tobacco products, or cigarette papers or tubes are put up by the manufacturer and delivered to the consumer.

Par. 13. In § 290.11 the definition for "Removal or remove" is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

Par. 14. Section 290.11 is amended by adding the definition for "Snuff" to read as follows:

Snuff. Any finely cut, ground, or powdered tobacco that is not intended to be smoked.

Par. 15. Section 290.11 is amended by adding the definition for "Smokeless tobacco" to read as follows: "*Smokeless tobacco.* Any snuff or chewing tobacco."

* * * * *

Par. 16. Section 290.11 is amended by adding the definition of "Tobacco products" to read as follows:

* * * * *

Tobacco products. Cigars, cigarettes, and smokeless tobacco. The term does not include smoking tobacco.

* * * * *

§ 290.61 [Amended]

Par. 17. Section 290.61 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 290.61a [Amended]

Par. 18. Section 290.61a is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 290.62 [Amended]

Par. 19. Section 290.62 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products" in the heading and text.

§ 290.63 [Amended]

Par. 20. Section 290.63 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products" in the heading and text.

§ 290.64 [Amended]

Par. 21. Section 290.64 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products" in the heading and text.

§ 290.65 [Amended]

Par. 22. Section 290.65 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products" in the heading and text.

§ 290.66 [Amended]

Par. 23. Section 290.66 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.67 [Amended]

Par. 24. Section 290.67 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products"; and by adding the parenthetical "(All recordkeeping requirements have been approved under OMB Control No. 1512–0180)" at the end of the section.

§ 290.69 [Amended]

Par. 25. Section 290.69 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 290.70 [Amended]

Par. 26. Section 290.70 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

Par. 27. Section 290.90 is revised to read as follows:

§ 290.90 Restrictions relating to export warehouse premises.

Export warehouse premises shall be used exclusively for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent removal under this part: Provided, that smoking tobacco may also be stored in an export warehouse.

§ 290.112 [Amended]

Par. 28. Section 290.112 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 290.123 [Amended]

Par. 29. Section 290.123 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 290.142 [Amended]

Par. 30. Section 290.142 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

Par. 31. Section 290.143 is revised to read as follows:

§ 290.143 General.

(a) Every export warehouse proprietor shall make a true and accurate inventory on ATF Form 3373 (5220.3) to the Regional Director (Compliance), of the numbers of (1) small cigars, (2) large cigars, (3) small cigarettes, (4) large cigarettes, (5) cigarette papers, and (6) cigarette tubes; and the pounds and ounces of (7), chewing tobacco, and (8) snuff, held by him at the times specified in this subpart.

(b) This inventory shall be subject to verification by an ATF officer. A copy of each inventory shall be retained by the export warehouse proprietor for 2 years following the close of the calendar year in which the inventory is made and shall be made available for inspection by any ATF officer upon his request.

§ 290.147 [Amended]

Par. 32. Section 290.147 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.152 [Amended]

Par. 33. Section 290.152 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.153 [Amended]

Par. 34. Section 290.153 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.154 [Amended]

Par. 35. Section 290.154 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

Par. 36. The heading of Subpart J is revised to read as follows:

Subpart J—Removal of Shipments of Tobacco Products and Cigarette Papers and Tubes by Manufacturers and Export Warehouse Proprietors

§ 290.181 [Amended]

Par. 37. Section 290.181 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.182 [Amended]

Par. 38. Section 290.182 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.183 [Amended]

Par. 39. Section 290.183 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.184 [Amended]

Par. 40. Section 290.184 is amended by replacing the words "cigars and cigarettes," wherever they appear with the words "tobacco products".

§ 290.185 [Amended]

Par. 41. Section 290.185 is amended by removing the words "cigars or cigarettes," wherever they appear and replacing them with the words "tobacco products".

§ 290.187 [Amended]

Par. 42. Section 290.187 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.188 [Amended]

Par. 43. Section 290.188 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.189 [Amended]

Par. 44. Section 290.189 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.190 [Amended]

Par. 45. Section 290.190 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.191 [Amended]

Par. 46. Section 290.191 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.192 [Amended]

Par. 47. Section 290.192 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.193 [Amended]

Par. 48. Section 290.193 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.194 [Amended]

Par. 49. Section 290.194 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.195 [Amended]

Par. 50. Section 290.195 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.196 [Amended]

Par. 51. Section 290.196 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.196a [Amended]

Par. 52. Section 290.196a is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.197 [Amended]

Par. 53. Section 290.197 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.198 [Amended]

Par. 54. Section 290.198 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.200 [Amended]

Par. 55. Section 290.200 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.201 [Amended]

Par. 56. Section 290.201 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.202 [Amended]

Par. 57. Section 290.202 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.203 [Amended]

Par. 58. Section 290.203 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.204 [Amended]

Par. 59. Section 290.204 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.205 [Amended]

Par. 60. Section 290.205 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.206 [Amended]

Par. 61. Section 290.206 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.207 [Amended]

Par. 62. Section 290.207 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.207a [Amended]

Par. 63. Section 290.207a is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.208 [Amended]

Par. 64. Section 290.208 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.210 [Amended]

Par. 65. Section 290.210 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.212 [Amended]

Par. 66. Section 290.212 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.213 [Amended]

Par. 67. Section 290.213 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products" in the heading and text.

§ 290.221 [Amended]

Par. 68. Section 290.221 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.222 [Amended]

Par. 69. Section 290.222 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.223 [Amended]

Par. 70. Section 290.223 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.224 [Amended]

Par. 71. Section 290.224 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.225 [Amended]

Par. 72. Section 290.225 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products" in the heading and text.

§ 290.226 [Amended]

Par. 73. Section 290.226 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products" in the heading and text.

§ 290.227 [Amended]

Par. 74. Section 290.227 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.228 [Amended]

Par. 75. Section 290.228 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.229 [Amended]

Par. 76. Section 290.229 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.230 [Amended]

Par. 77. Section 290.230 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.255 [Amended]

Par. 78. Section 290.255 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 290.264 [Amended]

Par. 79. Section 290.264 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

Sec. D. The regulations in 27 CFR Part 295 are amended as follows:

Authority and Issuance

27 CFR Part 295 is amended as follows:

Par. 1. The authority citation for Part 295 is revised to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

Par. 2. The heading of Part 295 is revised to read as follows:

PART 295—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX FOR USE OF THE UNITED STATES

Par. 3. The table of sections for Part 295 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products" in the headings for

§§ 295.1 and 295.25 and by adding the heading, Notice for Smokeless Tobacco, for § 295.43 to read as follows:

* * * * *

295.1 Removal of tobacco products and cigarette papers and tubes, without payment of tax, for use of the United States.

* * * * *

295.25 Unlawful purchases, receipt, possession, or sale of tobacco products or cigarette papers or tubes, after removal.

* * * * *

295.43 Notice for smokeless tobacco.

* * * * *

§ 295.1 [Amended]

Par. 4. In § 295.1 the heading and text are amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 295.11 [Amended]

Par. 5. Section 295.11 is amended by adding alphabetically the definition for "Chewing Tobacco" to read as follows: *Chewing tobacco.* Any leaf tobacco that is not intended to be smoked.

Par. 6. Section 295.11 is amended by revising the definition of "Factory" to read as follows: "The premises of a manufacturer of tobacco products or cigarette papers and tubes in which he carries on such business."

Par. 7. Section 295.11 is amended by revising the definition for "Manufacturer of tobacco products" to read as follows: "Any person who manufactures cigars, cigarettes, or smokeless tobacco, except that such term shall not include (a) a person who produces cigars, cigarettes, or smokeless tobacco, solely for his own personal consumption or use; or (b) a proprietor of a customs bonded manufacturing warehouse with respect to the operation of such warehouse."

Par. 8. Section 295.11 is amended by revising the definition or "Package" to read as follows: "The container in which tobacco products or cigarette papers or tubes are put up by the manufacturer and offered for sale or delivery to the consumer."

Par. 9. Section 295.11 is amended by revising the definition for "Removal or remove" to read as follows: "The removal of tobacco products or cigarette papers or tubes from the factory."

Par. 10. Section 295.11 is amended by adding alphabetically the definitions for "Smokeless Tobacco" and "Snuff" to read as follows: *Smokeless tobacco.* Any chewing tobacco or snuff. *Snuff.* Any finely cut, ground, or powdered tobacco that is not intended to be smoked.

Par. 11. Section 295.11 is amended by revising the definition for "Tobacco Products" to read as follows: "Cigars, cigarettes, and smokeless tobacco. The term does not include smoking tobacco."

§ 295.23 [Amended]

Par. 12. Section 295.23 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 295.25 [Amended]

Par. 13. The heading of § 295.25 and text are amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 295.31 [Amended]

Par. 14. Section 295.31 is amended by replacing the words "cigars, cigarettes," anywhere they appear with the words "tobacco products".

§ 295.32 [Amended]

Par. 15. Section 295.32 is amended by replacing the words "cigars, cigarettes," anywhere they appear with the words "tobacco products".

§ 295.33 [Amended]

Par. 16. Section 295.33 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 295.34 [Amended]

Par. 17. Section 295.34 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 295.35 [Amended]

Par. 18. Section 295.35 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

Par. 19. Section 295.36 is revised to read as follows:

§ 295.36 Payment of tax.

Any tax which becomes due and payable on tobacco products and cigarette papers and tubes removed under this part shall be paid to the district director, for the district in which the factory from which such articles were removed is located, with sufficient information to identify the taxpayer, the nature and purpose of the payment, and the articles covered by the payment: Provided, That a manufacturer of tobacco products or cigarette papers or tubes may pay any tax for which he becomes liable under this part by an appropriate adjustment in his current tax return Form 5000.24. In paying the tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

§ 295.37 [Amended]

Par. 20. Section 295.37 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 295.41 [Amended]

Par. 21. Section 295.41 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 295.42 [Amended]

Par. 22. Section 295.42 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

Par. 23. Section 295.43 is added to read as follows:

§ 295.43 Notice for smokeless tobacco.

Every package of chewing tobacco or snuff shall, before removal subject to tax, have adequately imprinted thereon, or on a label securely affixed thereto, the designation "chewing tobacco" or "snuff", and the quantity, expressed in pounds and ounces (if the package contains over one pound) or in ounces (if the package contains less than one pound) of such product contained therein.

§ 295.46 [Amended]

Par. 24. Section 295.46 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 295.51 [Amended]

Par. 25. Section 295.51 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

Sec. E. The regulations in 27 CFR Part 296 are amended as follows:

Authority and Issuance

27 CFR Part 296 is amended as follows:

Paragraph 1. The authority citation for Part 296 is revised to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5708, 5751, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7608, 7805, 44 U.S.C. 3504(h), 49 U.S.C 782.

Par. 2. The heading of Part 296 is revised to read as follows:

PART 296—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 3. The table of sections for Part 296 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products" in the headings of

Subpart A and Subpart C, in the text of § 296.75, and the undesignated center heading following § 290.78 and by replacing the words "cigars and cigarettes" with the words "tobacco products" in the heading for Subpart G and § 296.166 to read as follows:

Subpart A—Application of 27 U.S.C. 6423, as Amended to Refund or Credit of Tax on Tobacco Products and Cigarette Papers and Tubes

* * * * *

296.16 * * *

Subpart C—Losses of Tobacco Products and Cigarette Papers and Tubes Caused by a Disaster Occurring After the Date of Enactment of the Excise Tax Technical Changes Act of 1958

* * * * *

296.75 Separation of imported and domestic tobacco products and cigarette papers and tubes; separate claims for taxes and duties.

* * * * * *

Destruction of Tobacco Products and Cigarette Papers and Tubes

* * * * *

Subpart G—Dealers in Tobacco Products

* * * * *

296.166 Dealing in tobacco products.

* * * * *

Par. 4. The heading of Subpart A of Part 296 is revised to read as follows:

Subpart A—Application of 27 U.S.C. 6423, as Amended, to Refund or Credit of Tax on Tobacco Products, and Cigarette Papers and Tubes.

Par. 5. The heading of Subpart C of Part 296 is revised to read as follows:

Subpart C—Losses of Tobacco Products and Cigarette Papers and Tubes Caused by a Disaster Occurring After the Date of Enactment of the Excise Tax Technical Changes Act of 1958

§ 296.71 [Amended]

Par. 6. Section 296.71 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 296.72 [Amended]

Par. 7. Section 296.72 is amended by revising the definition for "Claimant" to read as follows:

"The person who held the tobacco products or cigarette papers and tubes for sale at the time of the disaster and who files claim under this subpart."

Par. 8. Section 296.72 is amended by revising the definition for "Duly authorized official" to read as follows: "Any Federal, State, or local government official in whom has been vested authority to condemn tobacco products and cigarette papers and tubes made the subject of a claim under this subpart."

Par. 9. Section 296.72 is amended by revising the definition for "removal or remove" to read as follows: "The removal of tobacco products or cigarette papers or tubes from the factory, or release of such articles from Customs custody."

Par. 10. Section 296.72 is amended by revising the definition for "Tax paid or determined" to read as follows: "The internal revenue tax on tobacco products and cigarette papers and tubes which has acutally been paid, or which has been determined pursuant to 26 U.S.C. 5703(b), and regulations thereunder, at the time of their removal subject to tax payable on the basis of a return."

Par. 11. Section 296.72 is amended by revising the definition of "Tobacco products" to read as follows: "Cigars, cigarettes, and smokeless tobacco. The term does not include smoking tobacco."

§ 296.73 [Amended]

Par. 12. Section 296.73 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

Par. 13. Section 296.74 is revised to read as follows:

§ 296.74 Execution and filing of claims.

Claims under this subpart shall be executed on Internal Revenue Service Form 843 in accordance with the applicable instructions on the form, and filed with the Regional Director (Compliance) of the region in which the tobacco products or cigarette papers or tubes were lost, rendered unmarketable, or condemned, within 6 months after the date on which the President makes the determination that the disaster has occurred. The claim shall state all the facts on which the claim is based, and shall set forth the number of small cigars, large cigars, (itemized separately as to the taxable wholesale price), small cigarettes, large cigarettes, cigarette papers, cigarette tubes and the pounds and ounces of chewing tobacco and snuff, as the case may be, and the rate and the amount claimed with respect to each article set forth, substantially in the form as shown in the example below:

EXAMPLE

Quantity	Article	Rate of tax	Amount
20,000	Small Cigars	$0.75 per thousand	$15.00
1,000	Large Cigars—Wholesale price $100 per thousand.	8½ pct of wholesale price	8.50
500	Large Cigars—wholesale price $236 per thousand.	$20 per thousand	10.00
10,000	Small Cigarettes	$8 per thousand	80.00
5,000	Large Cigarettes	$8.40 per thousand	42.00
2,000 sets	Cigarette papers—50 each set	$0.005 per set	10.00
1,000 sets	Cigarette Papers—100 each set	$0.01 per set	10.00
1,000	Cigarette Tubes	$0.01 per 50 tubes	0.20
100 lbs	Chewing Tobacco	$.08 per lb	8.00
200 lbs	Snuff	$.24 per lb	48.00
Total Claimed			$231.70

The claimant shall certify on the claim to the effect that no amount of internal revenue tax or customs duty claimed therein has been or will be otherwise claimed under any other provision of law or regulations.

§ 296.75 [Amended]

Par. 14. Section 296.75's heading and text are amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 296.76 [Amended]

Par. 15. Section 296.76 is amended by replacing the words "cigars, cigarettes," wherever they appear with the words "tobacco products".

§ 296.77 [Amended]

Par. 16. Section 296.77 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

§ 296.78 [Amended]

Par. 17. Section 296.78 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

Par. 18. The undesignated center-head following § 296.78 is amended to read as follows: "Destruction of Tobacco Products and Cigarette Papers and Tubes."

§ 296.79 [Amended]

Par. 19. Section 296.79 is amended by replacing the words "cigars, cigarettes,"

wherever they appear with the words "tobacco products".

§ 296.80 [Amended]

Par. 20. Section 296.80 is amended by replacing the words "cigars, cigarettes," with the words "tobacco products".

Par. 21. The heading of Subpart G is revised to read as follows:

Subpart G—Dealers in Tobacco Products

§ 296.161 [Amended]

Par. 22. Section 296.161 is amended by replacing the words "cigars and cigarettes" with the words "tobacco products".

§ 296.163 [Amended]

Par. 23. Section 296.163 is amended by revising the definition for "Manufacturer of tobacco products" to read as follows: "Any person who manufactures cigars, cigarettes, or smokeless tobacco, except that such term shall not include (a) a person who produces cigars, cigarettes, or smokeless tobacco, solely for his own personal consumption or use; or (b) a proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse."

Par. 24. Section 296.163 is amended by revising the definition for "Package" to read as follows: "The container in which tobacco products are put up by the manufacturer or the importer and offered for delivery to the consumer."

Par. 25. Section 296.163 is amended by revising the definition for "Removal or remove" to read as follows: "The removal of tobacco products from the factory or release from Customs custody, including the smuggling or other unlawful importation of such articles into the United States."

Par. 26. Section 296.163 is amended by revising the definition for "Tobacco products" to read as follows: "Cigars, cigarettes, and smokeless tobacco. The term does not include smoking tobacco."

§ 296.164 [Amended]

Par. 27. Section 296.164 is amended by replacing the words "cigars, or cigarettes" with the words "tobacco products".

§ 296.166 [Amended]

Par. 28. Section 296.166 the heading and text are amended by replacing the words "cigars and cigarettes" with the words "tobacco products".

§ 296.167 [Amended]

Par. 29. Section 296.167 is amended by replacing the words "cigars or cigarettes" with the words "tobacco products".

Signed: June 23, 1986.

W.T. Drake,

Acting Director.

Approved: July 2, 1986.

Francis A. Keating II,

Assistant Secretary (Enforcement).

[FR Doc. 86-17441 Filed 8-4-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

32 CFR Part 90

[DoD Instruction 7045.18]

Collection of Indebtedness Due the United States

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) is revising its regulations on collection of indebtedness due the United States. These revisions are necessary to (1) clarify the issue of a debtor's entitlement to a hearing, the types of hearings available to a debtor and the preparatory requirements for the hearing; (2) establish a certified debt claim form to be used by DoD Components when requesting offsets from another government agency and (3) incorporate guidelines for establishing write-off and close-out procedures in Components' implementing regulations.

EFFECTIVE DATE: April 22, 1986.

FOR FURTHER INFORMATION CONTACT: Adam T. Shaw, (202) 697-0585.

SUPPLEMENTARY INFORMATION: This change is the second change to the basic instruction (DoD Instruction 7045.18). This Instruction was published in the April 22, 1985 **Federal Register** (50 FR 15734). Change 1 included three specific revisions ordered by the Office of Personnel Management as a condition of OPM approval, required by 5 CFR 550.1104. Also, there were minor administrative revisions. Change 1 was not published in the **Federal Register**. Change 2 has been made primarily to clarify paragraph E.7 of Enclosure 1, "Hearings and Written Submissions." Although other administrative changes were made, the primary revisions were made to subparagraphs E.7.a.(1)-(3). Paragraphs E.7.a.(1)-(3) were rewritten to more accurately describe the procedures under which a debtor may petition for and be granted a hearing by DoD Creditor Components. The new language explains the circumstances under which each type of hearing will be granted and the documentation required by the petitioner and the Creditor Component in preparing for the hearings. The other administrative changes to the enclosure involved renumbering and restructuring of paragraphs with no appreciable changes in meaning. Paragraph M. is a new paragraph which provides guidelines for DoD Components to follow in developing procedures for writing-off and closing-out uncollectible accounts. This paragraph has been added to comply with OMB Circular A-129 of May 9, 1985.

List of Subjects in 32 CFR Part 90

Debt collection.

PART 90—[AMENDED]

Accordingly, 32 CFR Part 90 is amended as follows:

1. The authority citation for Part 90 continues to read as follows:

Authority: 5 U.S.C. 5514.

§ 90.3 [Amended]

2. Section 90.3(b) is amended by changing the words "Creditor agency" to read "Creditor component".

3. In § 90.6, Enclosure 1 is amended by adding paragraph E.5.a.(10) (a) through (c) and paragraph b. to read as follows:

§ 90.6 Procedures.

* * * * *

Enclosure 1—General Procedures

* * * * *

E. * * *

5. * * *

a. * * *

(10) The fact that any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(a) Disciplinary procedures appropriate under chapter 75 of Title 5, United States Code, Part 752 of Title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(b) Penalties under the False Claims Act, sections 3729-3731 of Title 31, United States Code, or any other applicable statutory authority; or

(c) Criminal penalties under sections 286, 287, 1001, and 1002 of Title 18, United States Code or any other applicable statutory authority.

b. DoD Creditor Components should respond promptly, within 30 days when feasible, to communications from the debtor, and should advise those who dispute the debt to furnish evidence supporting their contentions.

4. Paragraph E.7 of Enclosure 1 is revised in its entirety to read as follows:

7. Hearings and Written Submissions.

a. *Petitions.* Debtors are entitled to petition for hearings under this Section within the following guidelines:

(1) If a debtor petitions for a hearing under this section, the DoD Creditor Component must determine whether the debtor is entitled to an oral hearing or whether a "paper hearing" comprised of written submissions is adequate. Unless specifically waived by the debtor, an oral hearing must be provided when: (a) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness and the waiver determination turns on an issue of credibility or veracity, or (b) the debtor requests reconsideration of the debt and the DoD Creditor Component decides that the question of the indebtedness cannot be resolved solely on review of the documentary evidence.

(2) An oral hearing is not required if the particular indebtedness or waiver request is of the type that rarely involves issues of credibility or veracity. In addition, the DoD Creditor Component must determine that a review of the written record is generally adequate in such cases, i.e., the DoD Creditor Component is not required to sift through each request to determine if it involves an issue of credibility or veracity.

(3) A debtor who has petitioned for a hearing but, under the above criteria, is not entitled to an oral hearing, shall be provided a "paper hearing" by which the determinations regarding the existence or amount of the debt or the terms of the offset schedule will be made based on written submissions by the debtor and the Creditor Component.

(4) The following general rules apply to any hearing:

(a) If an employee wants a hearing concerning the existence amount of the debt or the proposed DoD Creditor Component's offset schedule, the employee must file a petition with the DoD Creditor Component concerned not later than 30 days from the date the employee receives the notification of the intent to collect by salary offset of within 45 days after receipt of records, of such records were requested by the debtor.

(b) The employee's petition or statement shall identify and explain with reasonable specificity and brevity the facts, evidence, and witnesses that the employee believes support his or her position.

(c) If an employee requests an oral hearing, the request may be changed to a paper hearing only if a written request is received by the Creditor Component at least three work days before the original hearing date.

(d) If an employee files a petition for a hearing, the DoD Creditor Component shall:

1. Determine the type of hearing and notify the employee. For oral hearings, the notice shall include the time, date, and location of the hearing. To the extent feasible, a location convenient for the employee shall be selected.

2. Provide the employee and the hearing official with a copy of the records in the DoD Creditor Component's possession relating to the employee's debt.

(e) Any appeal of the determination of the existence or amount of the debt must be filed with the DoD Creditor Component and hearing officer:

1. Not later than 25 days from the date the debtor receives the records from the Creditor Component, if such records were not previously furnished, or

2. Not later than 10 days after receipt of notification, of such records were previously furnished the debtor.

a. To contest the DoD Creditor Component's determination of the existence or amount of the debt the employee must submit the reasons why the employee believes the Creditor Component's determination is erroneous. The submission shall include (1) a list of witnesses, if applicable, including a summary of their anticipated testimony; (2) a copy of any records not previously introduced; and (3) the name of any representative the employee expects to be present.

b. To contest the DoD Creditor Component's offset schedule the employee must submit: (1) a proposed alternative offset schedule with supporting documents showing why the Creditor Component's schedule would reduce an extreme financial hardship for the employee; (2) a list of witnesses the employee intends to call at the hearing and a summary of their anticipated testimony; and (3) a copy of the records the employee intends to introduce at the hearing if they differ from the ones provided by the DoD Creditor Component. The supporting documents should include specific details concerning income and expenses of the employee, his or her spouse, and dependents for one year preceding the Creditor Component's notice and projected income and expenses during the repayment period proposed by the Creditor Component.

(f) *Standards for Determining Extreme Financial Hardship. 1.* A proposed offset schedule produces extreme financial hardship if it prevents the employee and his or her spouse and dependents from meeting the costs necessarily incurred for essential subsistence expenses. These essential subsistence expenses include only costs incurred for food, housing, necessary public utilities, clothing, transportation, and medical care.

2. In determining whether the offset schedule produces extreme financial hardship, the DoD Component and the hearing official shall consider the following:

a. The income from all sources of the employee, his or her spouse, and dependents.

b. The extent to which the assets of the employee or his or her spouse and dependents are available to meet the offset and the essential subsistence expenses.

c. Whether essential subsistence expenses have been minimized to the greatest extent possible.

d. The extent to which the employee or his or her spouse can borrow money to meet the offset and other essential expenses.

e. The extent to which the employee and his or her spouse and dependents have other exceptional expenses that should be taken into account and whether these expenses have been minimized.

(g) Within 15 days after receipt of the materials submitted under subparagraph (e) above, the DoD Creditor Component shall either accept the employee's contentions concerning the existence of the debt, the amount of the debt or the employee's alternative offset schedule or provide the employee and the hearing official with the following:

1. A statement supporting the DoD Creditor Component's determination regarding the existence and amount of the debt.

2. A statement setting forth the reasons why the DoD Creditor Component's proposed offset schedule does not produce an extreme financial hardship for the employee.

3. A list of witnesses that the DoD Creditor Component intends to call at the hearing and a summary of their anticipated testimony.

b. *Waiver of Rights to Hearing.* (1) An employee forfeits or waives his or her right to an administrative review or hearing and will have his or her pay offset in accordance with the DoD Creditor Component's offset schedule, if the employee:

(a) Fails to file a petition for an administrative review or hearing before the deadline date prescribed in paragraph E.7.a., above.

(b) Fails to file the required submissions under paragraphs 78.a.(4) (b) and (e), above.

(c) Is scheduled to appear and fails to appear at an oral hearing.

(2) The hearing official may find that the employee has not waived his or her right to a hearing if the employee petitions the hearing official for a determination that the employee had good cause for failing to comply with the established deadline date or for failing to appear at the hearing.

c. *Procedures.* (1) An administrative review or the hearing shall be conducted by a hearing official who is not an employee of the DoD Creditor Component to which the debt is owed and is not otherwise under the supervision or control of the Creditor Component. For instance, when collection action is being taken by the Department of the Army (DA) and a hearing is granted to a DA employee, the hearing offical cannot be employed or supervised by the DA. When collection action is being taken by Washington Headquaters Services for OSD Staff and field activities or by DoD Defense Agencies, i.e., DLA, DCA, DSAA, etc., the hearing official shall be selected from the Department of the Army, Navy or Air Force.

(2) Administrative reviews or hearings should be conducted by DoD personnel. While the Creditor Component may select the Component to conduct the review or administrative hearing, assignment of a hearing official to a particular administrative review or hearing shall be made by the Component selected to conduct the administrative review or hearing. Each Component will identify a reasonable number of employees qualified to serve as hearing officers for other DoD Creditor Components. Eligible persons include grievance or appeals examiners, attorney advisors, staff judge advocates, and other individuals who have been trained in or performed hearing officer duties or who are considered to be qualified to perform hearing officer duties by reason of training or experience. Arrangements for the temporary assignment of hearing officers between Components should reflect any

agreed upon reimbursement of expenses. Implementing procedures shall identify a central point of coatact with regard to hearing officials who have been identified by each Component. If necessary, individuals not employed by the Department of Defense may be employed on a temporary or intermittent basis to act as hearing officials. Employment of such individuals should occur only where it is clearly impractical to use Department of Defense Personnel.

(3) An oral hearing normally will consist of informal conferences before a hearing official in which the employee and Creditor Components will be given a full opportunity to present evidence, witnesses, and arguments. The employee may represent him or herself or be represented by a person of his or her choice. The hearing official will permit only the introduction of such evidence as described in the prehearing submissions under paragraphs 7.a.(4) (b) and (e)., above and the employee may not raise any issue that he or she has not raised previously concerning the existence or amount of the debt or the Creditor Component's proposed offset schedule.

(4) For oral hearings, the Creditor Component shall provide for maintaining a summary record of the hearing.

(5) The Creditor Component or the agency that will conduct the oral hearing shall select a hearing site as close as possible to the debter's work station.

(6) The hearing official shall provide a written decision on the merits of the administrative review or oral hearing that discusses the basic facts offered to document the nature and origin of the debt and the hearing official's findings and conclusions concerning the existence and amount of the debt and, where applicable, the repayment schedule.

(7) Expenses incident to a debtor or employee inspecting and copying government records or transportation of a debtor or his representative to attend oral hearings shall be born by the employee or debtor requesting the hearing. The Component providing the hearing shall bear expenses for the hearing official. To assist employees in deciding whether necessary expenses incident to travel are warrented, DoD Components shall publish the locations at which hearings will be conducted.

d. *Non-waiver of rights by Payments.* Department of Defense Creditor Components shall prescribe in implementing regulations that an employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

5. Paragraph G.1.a.(2) of Enclosure 1 is revised to read as follows:

(2) A certified DoD debt claim form.

6. Paragraph G.2.b. is revised to read as follows:

b. A certified debt claim from (if used by the Creditor Agency).

7. A new paragraph M is added to Enclosure 1 to read as follows:

M. Write-Off and Close-Out Procedures

1. DoD Components shall develop write-off procedures that identify and remove uncollectible accounts from receivables, and close-out procedures that discontinue collection activity. These procedures will improve accounting for the cost of credit programs and will allow management to focus efforts on accounts most likely to be collected.

a. When appropriate, the allowance for uncollectible debts account shall be adjusted, written-off accounts closed, and the debtor's account ledgers removed from active Component files. DoD Components shall write off accounts when:

(1) Estimated collection costs exceed the amount recoverable.

(2) A claim is without legal merit or it cannot be substantiated by evidence.

(3) A legal judgment, once obtained, has failed to accomplish full or partial collection.

(4) A debtor cannot be located and either (a) there is no security remaining to be liquidated, or (b) the applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify retaining the claim.

(5) A collection agency has returned with documentation effectively showing that the debt is uncollectible.

b. DoD Components shall close out written-off delinquent accounts and remove the accounts from other active receivables.

(1) DoD Components may find it appropriate to maintain subsidiary records of individual accounts that may subsequently be collected by offset against future benefit claims.

(2) An IRS referral log shall be maintained by calendar year which contains a record of amounts written-off and debtor-identifying information.

(3) DoD Components may reinstitute collection action on closed-out accounts if subsequent evidence shows a debtor's new ability to repay.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 30, 1986.

[FR Doc. 86-17541 Filed 8-4-86; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-4-FRL-3060-2]

Georgia; Final Authorization of State Hazardous Waste Program; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This notice corrects the date and address previously published in the **Federal Register**, July 7, 1986 (51 FR 24549) for a public hearing to be held in Atlanta, Georgia. The date is to be changed from Wednesday, August 6, 1986 to Monday, August 11, 1986. The address is to be inserted at the beginning of the address section to read as follows: "If significant interest for a public hearing is expressed, the hearing will be held in the Cafeteria Conference Room, Floyd Twin Towers Building, 205 Butler Street, SE., Atlanta, Georgia 30334."

FOR FURTHER INFORMATION CONTACT: Otis Johnson, (404) 347-3016.

Dated: July 25, 1986.

Jack E. Ravan,

Regional Administrator.

[FR Doc. 86-17558 Filed 8-4-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 40800-4100]

Reef Fish Fishery of the Gulf of Mexico; Corrections

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

ACTION: Final rule; corrections.

SUMMARY: This document corrects two geographical coordinates listed in Table 1 in the final rule implementing the Fishery Management Plan for the Reef Fish Fishery of the Gulf of Mexico published October 9, 1984, 49 FR 39548.

FOR FURTHER INFORMATION CONTACT: Donald W. Geagan, 813-893-3722.

Dated: July 30, 1986.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

The following corrections are made to Table 1 in § 641.22:

§ 641.22 [Corrected]

Under the "Loran C coordinates" heading in Table 1, the Y Loran C coordinate for point 8 is corrected from "43117.4" to "44174.4" and for point 9 from "43347.6" to "44347.6".

[FR Doc. 86-17540 Filed 8-4-86; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 150
Tuesday, August 5, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 1

[Docket No. 24912; Petition Notice PR-86-9A]

Petition of the General Aviation Manufacturers Association To Establish Definitions for Intentional One-Engine-Inoperative Speed and Air-Minimum Control Speed, and Establish a Procedure for Demonstration of Air-Minimum Control Speed

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of reopening of comment period.

SUMMARY: This notice reopens the comment period for Petition for Rulemaking No. PR-86-9 (51 FR 21916; June 17, 1986). That notice published verbatim for public comment the petition of the General Aviation Manufacturers Association dated January 22, 1986. The petitioner proposes that the Federal Aviation Administration amend Part 1 of the Federal Aviation Regulations (FAR) to establish definitions for an intentional one-engine-inoperative speed, V_{SEE} and air-minimum control speed, V_{MCA}. In addition, the petitioner petitions the FAA to establish a standard for the demonstration of directional control when one engine suddenly becomes inoperative by amending the rules, handbooks, and advisory circulars. The petitioner contends that such action will be consistent with industry practice and National Transportation Safety Board (NTSB) Safety Recommendations A76-97 and A76-98 dated July 29, 1976.

DATE: Comments must be received on or before September 4, 1986.

ADDRESS: Comments on the petition contained in Notice PR-86-9A may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Atten: Rules Docket (AGC-204), Docket No. 24912, 800 Independence Avenue SW., Washington, DC 20591. Comments may be inspected in Room 915-G weekdays, except Federal holiday, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Robert Ball, Regulations and Policy Office, ACE-110, Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Comments received on or before the closing date for comments will be considered by the Administrator before taking action on the petition. All comments received will be available for examination in the FAA docket. Persons wishing the FAA to acknowledge receipt of their comments should submit a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. 24912." The postcard will be date stamped and returned to the commenter.

Availability of Notice

Any person may obtain a copy of Notice No. PR-86-9 by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 426-8058. Communications must identify the notice number. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On January 22, 1986, the General Aviation Manufacturers Association submitted a petiton for rulemaking to establish a standard for the demonstration of directional control when one engine suddenly becomes inoperative, and to establish definitions for V_{SEE} and V_{MCA}. The petition was published verbatim in the **Federal Register** on June 17, 1986 (51 FR 21916) with a closing date for submission of comments on July 17, 1986. On July 16, 1986, a request was received from the Air Transport Association of America requesting an extension of comment period on this petition.

Reopening of Comment Period

The FAA has determined that it is in the public interest to reopen the comment period for Notice PR-86-9 to afford the public and aviation industry the opportunity to further review the petition. Accordingly, the comment period for Notice PR-86-9 is reopened with a closing date of September 4, 1986.

Conclusion

This document reopens the comment period on a petition for rulemaking to afford the public maximum opportunity to review and respond to a petition for rulemaking. Therefore, this document imposes no regulatory or economic burden on the public or industry. For these reasons, I certify that this document will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA has determined that this notice involves an action which is not a major rule under Exectuve Order 12291 and is not considered significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, DC, on July 30, 1986.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 86-17511 Filed 8-4-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 86-AWA-24]

Proposed Alteration of Restricted Area R-5803 Chambersburg, PA

Correction

IN FR Doc. 86-16341 beginning on page 26263 in the issue of Tuesday, July 22, 1986, make the following corrections:

1. On page 26263, in the third column, in the heading, the Docket No. should read as it appears above.

2. On page 26264, in the second column, in the second line, "RPRM" should read "NPRM".

BILLING CODE 1505-01-M

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14 CFR Part 75

[Airspace Docket No. 86-AWP-15]

Proposed Alteration of Jet Route J-143, California

Correction

In FR Doc. 86-16342 beginning on page 26264 in the issue of Tuesday, July 22, 1986, make the following correction: On page 26265, in the second column, in the fourth line from the bottom, insert "*Acting*" before "*Manager*,".

BILLING CODE 1505-01-M

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14 CFR Part 75

[Airspace Docket No. 86-ASO-19]

Proposed Alteration of Jet Routes—South Carolina

Correction

In FR Doc. 86-16343 beginning on page 26265 in the issue of Tuesday, July 22, 1986, make the following corrections:

1. On page 26265, in the third column, in the ADDRESSES caption, in the fourth line, "85–" should read "86–".

2. On page 26266, in the second column, in the Authority, in the first line, insert "1354(a)," after "1348(a),".

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Rel. No. 34-23486; S7-18-86]

Concept Release on Takeovers and Contests for Corporate Control

AGENCY: Securities and Exchange Commission.

ACTION: Request for Public Comment

SUMMARY: The Commission is seeking public comment on three topics relating to takeovers and contests for corporate control: (1) Whether the Williams Act should apply whenever a person acquires a substantial percentage of a target company's securities during or shortly after a tender offer; (2) Whether there should be a governmental response to the proliferation of "poison pill" plans; and (3) Whether the Commission should adopt a self-governance exemption to its "all holders" rule, as well as to other provisions of its tender offer rules. The Commission will review comments received in response to this release with a view towards determining whether future rulemaking or legislative proposals are appropriate.

DATE: Comments should be received by September 30, 1986.

ADDRESS: Comment letters should refer to File S7-18-86 and be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Joseph G. Connolly, Jr. or Gregory E. Struxness ((202) 272-3097), Office of Tender Offers, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: In this concept release, the Commission requests public comment on three topics related to takeovers and contests for corporate control. The Commission has determined that these topics deserve further inquiry because of developments in the market for corporate control, recent court decisions, and comments made during public roundtable meetings with representatives of investor groups, experts in the legal and financial aspects of takeovers, and participants in contests for corporate control.

INTRODUCTION

1. *Substantial Share Acquisitions Outside the Williams Act.* Two Courts of Appeals have held that the tender offer provisions of the Williams Act and Commission rules adopted thereunder did not apply to certain substantial acquisitions of shares that occurred during a tender offer or immediately after termination of a tender offer. The Ninth Circuit's decision in *Carter Hawley Hale* allowed a target company to purchase a majority of its own shares in the open market in six days without complying with the Williams Act. The Second Circuit's decision in *Hanson Trust* allowed a tender offer bidder to terminate its tender offer and immediately purchase almost a third of a target company's shares in open-market and privately negotiated transactions, without complying further with the Williams Act.

The Commission seeks comment as to whether investors require the protections provided by the Williams Act and Commission rules adopted thereunder in the case of certain substantial share acquisitions made during or shortly after termination of a conventional tender offer, and the benefits and costs of applying the Williams Act to these acquisitions. The Commission specifically requests comment on a proposal that would subject to Williams Act requirements all substantial acquisitions of a target company's securities either during or shortly after termination of a conventional tender offer.

2. *"Poison Pills."* "Poison pill" plans place impediments in the path of any person who seeks to acquire substantial shareholdings directly from a target's shareholders without obtaining the prior approval of the target's board. Delaware's Supreme Court upheld one such plan in November of 1985. Currently, more than 190 publicly-traded corporations have poison pill plans in place, and there are indications that more publicly-held corporations may adopt them.

Generally, "poison pill" plans are adopted by a corporation's board of directors without shareholder approval. Proponents of these plans contend that they allow managements to negotiate more effectively on behalf of stockholders. In particular, it is said that these plans protect shareholders from tender offers at unreasonably low prices as well as from partial offers, two-tier offers, open-market purchase programs, and other allegedly abusive takeover practices.

Opponents of these plans argue that they deter takeovers and proxy contests, can entrench management to the detriment of stockholders, and are tantamount to recapitalizations of the issuer effected without shareholder approval. Recent research suggests that poison pills can, under some circumstances, cause a statistically significant decline in the price of a company's shares. There are also indications that some boards of directors may have adopted poison pill plans despite suggestions that the corporation's shareholders would have opposed such plans, had the matter been put to a vote. Because of these and other concerns, it has been suggested that poison pill plans should, at a minimum, be subject to shareholder approval.

The Commission seeks information regarding the extent to which the incidence of poison pill plans is increasing, the costs and benefits of such plans, and the investor protection issues raised by these plans. The Commission also seeks comment as to whether a governmental response is appropriate; whether a governmental response, if appropriate, should be at the state or federal level; and, if at the federal level, the nature of the most appropriate response.

3. *Self-Governance.* State corporation codes and portions of the federal securities laws permit corporations to modify the application of certain regulations to suit their individual circumstances, provided that the corporation acts in accordance with principles of corporate self-governance. The Commission seeks comment on the advisability of adopting a self-governance exemption to its "all holders" rule, as well as to other provisions of its tender offer regulations.

The Williams Act and the Commission's tender offer rules currently operate as rules of general applicability with no provision for modification by stockholder or director action. Tender offers are thus conducted according to uniform rules, and all participants are equally subject to regulations that Congress and the Commission have judged to be in the public interest.

The Commission is interested in exploring whether the public interest might be better served if individual corporations are permitted to craft safeguards suited to the specific circumstances of the corporation and its shareholders rather than be unconditionally subject to the provisions of the Williams Act. Should stockholders and directors be permitted jointly to determine that certain provisions of the tender offer rules are less effective than alternative protections they can craft and implement for themselves? Would a selfgovernance exemption that permits stockholders and directors to design protections suitable for an individual corporation be a beneficial supplement to regulations that would otherwise have general applicability?

The Commission seeks comment as to whether principles of self-governance can contribute to the efficient and equitable operation of tender offer regulations. In particular, the Commission seeks comment as to the probable costs and benefits of self-governance exemptions to tender offer regulations; the investor protection issues raised by such exemptions; the form and workability of self-governance exemptions; and the specific provisions of the tender offer regulations that are most appropriate candidates for self-governance exemptions.

Specific Requests for Comment

I. Share Acquisitions in Conjunction With Tender Offers

The Commission seeks to determine whether acquisition programs for a target company's shares effected during or shortly after termination of a tender offer for the target's securities present investor protection concerns. In the event investor protection issues are present, the Commission seeks comment as to whether a regulatory response is required and, if so, the nature of an appropriate response.

A. Issues Presented

Announcement of a control contest generally builds a premium into the price of the target company's stock. This premium reflects the market's response to the expected increase in security value that will accrue in the event the takeover is completed on the announced terms. Also reflected in the market price is the market's assessment of the probability that the offer will be defeated, or that a takeover may take place on terms and conditions materially different from those initially announced.

After the announcement of a tender offer, shares of the target company often become concentrated in the hands of a smaller number of investors. This concentration represents an allocation of the risk created by uncertainty over the outcome of the takeover process. Shareholders who wish to receive some portion of the tender offer premium but who are unwilling to assume the risk that the tender offer will not be consummated frequently sell into the market. These shares are often purchased by professionals, who assume the risk and provide liquidity to the market.[1]

The Williams Act and tender offer rules are designed to provide shareholders with sufficient time and information to make an informed decision whether to sell into the market, tender, or hold the securities. They also establish substantive protections, including a minimum offering period, and withdrawal and proration rights. These substantive protections prohibit a bidder from purchasing shares under the tender offer until the expiration of the offer. A bidder also is prohibited from purchasing securities outside of its tender offer once the tender offer is announced and during the time that the offer is open.[2] This prohibition prevents bidders from acquiring shares through open market purchases, including purchases from investors who have acquired substantial holdings after announcement of the takeover bid. This and related prohibitions ensure that all target shareholders will be treated equally by a bidder during the tender offer.

Restrictions on the acquisition of securities during a tender offer currently apply only to a tender offer bidder. Other purchasers of a target company's securities are free to engage in open market and privately negotiated transactions at any time during the course of a tender offer,[3] sometimes in competition with or to defeat the original bidder. For example, the Ninth Circuit permitted a target company to defeat a third party tender offer through unregulated, large scale open market purchases of its own securities.[4] Similarly, the Second Circuit permitted a third party bidder, faced with a hostile response by the target company, to terminate its tender offer and immediately effect substantial acquisitions of target company securities through unregulated open market purchases and privately negotiated transactions.[5]

The Commission seeks comment on the consequences of such acquisitions, and their associated costs and benefits. Commentators are requested to address both the shareholder protection and market efficiency issues presented by such acquisitions. Specifically, with respect to investor protection interests, the Commission seeks comment as to whether shareholders have adequate time and information upon which to act in the face of such unregulated acquisition programs, and whether some groups of shareholders are unfairly disadvantaged in such transactions because of the speed with which the transactions occur, the lack of adequate information concerning the transaction, or the inability to participate on the same basis as other shareholders.

The Commission also seeks comment as to the consequences of regulating timing and disclosure in conventional tender offers while permitting other large acquisitions to compete with such

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[1] For an analysis of the relationship between market price prior to completion of a takeover transaction and the probability that the transaction will be successfully completed, see Samuelson & Rosenthal, *Price Movement as Indicators of Tender Offer Success*, 41 J. Fin. 481 (1986).

[2] Rule 10b-13, 17 CFR 240.10b-13.

[3] This assumes that those acquisitions are not themselves deemed to be an unconventional tender offer.

[4] *See SEC* v. *Carter Hawley Hale Stores, Inc.*, 760 F.2d 945 (9th Cir. 1985). The Commission sued Carter Hawley on the grounds that the purchase program constituted an unconventional tender offer that should have complied with the Williams Act and the regulations thereunder. The court rejected the Commission's position.

[5] *See Hanson Trust PLC* v. *SCM Corp.*, 774 F.2d 47 (2d Cir. 1985). The Commission, at the request of the Second Circuit Court of Appeals, filed an amicus brief in which it expressed the view that the bid termination and immediate purchases raised sufficiently substantial questions under the Williams Act to justify the District Court's issuance of a preliminary injunction. The Second Circuit did not agree.

offers, unfettered by such restrictions. In particular, the Commission seeks comment as to whether the possibility of an unregulated competing acquisition by the target or a third party deters or disadvantages the initial bidder or encourages initial takeover attempts to proceed other than by way of conventional tender offers.[6] The Commission also seeks comment as to whether the ability to abandon a conventional tender offer and commence unregulated purchases, as permitted in *Hanson Trust PLC* v. *SCM Corporation*,[7] offsets the possible deterrence of initial bids.

The Commission further seeks comment on the differences, if any, (1) between concerns raised by acquisitions effected during a tender offer and acquisitions effected shortly after termination of a tender offer, and (2) between acquisitions effected by an issuer in the context of a third party offer and acquisitions effected by a third party in the context of either an issuer or third party offer. With respect to any identified effects, commentators are requested to discuss whether such effects are adequately addressed through existing regulation and/or market forces and if not, what response, if any, is warranted. Commentators are requested to provide factual support for their views.

B. A Possible Approach to Regulation of Acquisitions During or Shortly After Tender Offers

One approach to the regulation of such acquisitions involves amending the tender offer rules promulgated under the Securities Exchange Act of 1934 (the "Exchange Act") to provide that a substantial acquisition of a target company's securities by any person after commencement of a formal tender offer for such securities, and until the expiration of a specified period after termination of the tender offer, would be deemed a "tender offer" required to be made in compliance with the tender offer rules. Under this approach, upon the commencement of a tender offer, by either an issuer or a third party, any person seeking to acquire a substantial amount of target company securities (e.g., 10 percent) would be required to effect that acquisition through a conventional tender offer. This requirement would apply to the acquisition of securities by the target company itself as well as to acquisitions by any third party. The establishment of a threshold level, such as 10 percent, is intended to avoid interference with the activities of most arbitrageurs and other market professionals. Commentators are specifically requested to address the need for such a threshold and the appropriate level thereof.

The establishment of a "cooling off" period after the termination of a tender offer would ensure that neither the initial bidder nor any other person could take advantage of the market activity generated by an offer to effect a rapid acquisition of securities.[8] Commentators are specifically requested to address the need for such a "cooling off" period and, if considered necessary, the appropriate amount of time that should be allotted to permit the impact of the offer on the market to subside.

Commentators are also requested to identify characteristics of acquisitions that occur during or shortly after tender offers that, in their view, should be exempted from the requirements of the regulations discussed above because the transactions do not raise investor protection or other concerns. Commentators are specifically requested to address the appropriateness of exempting acquisitions effected through "lock-up" options granted by the issuer.

II. "Poison Pill" Plans

"Poison pill" plans place impediments in the path of any person who seeks to acquire substantial shareholdings directly from a target's stockholders without first obtaining the approval of the target's board.[9] Proponents of these plans state that they are designed to protect shareholders by giving their boards of directors the power to ensure that shareholders receive a fair price for their shares.[10] These plans are generally adopted without the approval of the corporation's stockholders.[11]

Poison pills were adopted as early as June of 1983.[12] On November 19, 1985, in *Moran* v. *Household International*, the Delaware Supreme Court ruled that a board's adoption of a poison pill plan without shareholder approval did not necessarily violate Delaware's corporation law or the business judgment rule.[13] Approximately 37 companies had poison pills in place as of the date of the *Household* decision.[14] Today, at least 190 companies have poison pills in place, and market observers believe this number will increase substantially.[15]

The term "poison pill" refers generally to preferred stock, rights, warrants, options, or debt instruments that an actual or potential target company distributes to its security holders.[16] These instruments are designed to deter nonnegotiated takeovers by conferring certain rights to shareholders upon the occurrence of a "triggering event," such as a tender offer or third party acquisition of a specified percentage of stock.[17] These rights usually have little value until the triggering event occurs, but may subsequently become quite expensive for any party to redeem or purchase.[18] "Flip over" and "flip in" plans are the most

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[6] For a related analysis, see Bradley & Rosenzweig, *Defensive Stock Reourchases*, 99 Harv. L. Rev. 1377 (1986).

[7] 774 F.2d at 47.

[8] Rule 13e-4(f)(6), 17 CFR 240.13e-4, currently prohibits purchases of securities for a period of ten business days after the expiration of an issuer tender offer.

[9] It has been said that poison pills typically "serve[] no conceivable business purpose other than deterring takeovers." Bogen, *More Legal Tests Likely on Stockholder Rights Plans*, Nat'l L.J., June 30, 1986, at 26. *See also* Letter from D.C. Clark, Chairman and CEO of Household International to Household's shareholders (Aug. 14, 1984) (The poison pill's warrants "should deter any attempts to acquire your company in a manner or on terms not approved by the Board.").

[10] *E.g.*, Letter from M. Lipton to the clients of Wachtell, Lipton, Rosen & Katz (Feb. 4, 1985) (Poison pill plans help "to preserve the option of the board of directors of a target company to make the ultimate decision as to its destiny.").

[11] *See, e.g., Moran* v. *Household Int'l, Inc.*, 500 A.2d 1346, 1348 (Del. 1985). *See also* Note, *Internal Transfers of Control Under Poison Pill Preferred Issuances to Shareholders: Toward A Shareholder Approval Rule*, 60 St. John's L. Rev. 94 (1985) [hereinafter Internal Transfers].

[12] Lenox, Inc. adopted a poison pill in its battle with Brown, Forman Distillers Corp. *See* Wall St. J., June 16, 1983, at 2, col. 2.

[13] *Moran* v. *Household Int'l, Inc.*, 500 A.2d 1346 (Del. 1985).

[14] Office of the Chief Economist, Securities and Exchange Commission, *The Economics of Poison Pills*, at Table 2 (March 5, 1986).

[15] Investor Responsibility Research Center, Ongoing Survey of Antitakeover Developments (May, 1986); Kidder, Peabody & Co., Impact of Adoption of Stockholder Rights Plan on Stock Price (June 9, 1986); Corporate Control Alert, June 1986 (and preceding issues).

[16] For a general description of the operation of poison pill plans see Internal Transfers, *supra* note 13; Note, *Delaware's Attempt to Swallow a New Takeover Defense: The Poison Pill Preferred Stock*, 10 Del. J. Corp. L. 569 (1985); Note, *Protecting Shareholders Against Partial and Two-Tiered Takeovers: The "Poison Pill" Preferred*, 97 Harv. L. Rev. 1964 (1984); Fleischer & Golden, "Poison Pill," Nat'l L.J., Feb. 24, 1986, at 17.

[17] *See, e.g., Dynamics Corp. of America* v *CTS Corp.*, No. 86-1601, slip op. at 14 (7th Cir. May 28, 1986) (plan is triggered when one shareholder owns 15% or more of CTS's stock); *Moran* v. *Household Int'l, Inc.*, 500 A.2d at 1348-49 (plan is triggered by tender offer for 30% of shares or acquisition of 20% of shares); *Horwitz* v. *Southwest Forest Indus.*, 604 F. Supp. 1130, 1132 (D. Nev. 1985) (same).

[18] *See, e.g., Dynamics Corp.* v. *CTS*, slip op. at 14 (holders of rights can buy stock and debentures at 25% of the then market price of the package); *Household*, 500 A.2d at 1349 (holders of 1/100 of a share of preferred stock able to purchase $200 of acquirer's stock for $100). *See generally* Ferrara & Phillips, *Opposition to Poison Pill Warrants is Mounting*, 7 Legal Times 13 (Oct. 15, 1984).

frequently used forms of poison pills,[19] but a large number of securities issuance plans could conceivably be crafted to have the same effect as currently popular poison pill plans.[20]

Tender offers can benefit shareholders by offering them an opportunity to sell their shares at a premium and by guarding against management entrenchment.[21] However, because poison pills are intended to deter nonnegotiated tender offers, and because they have this potential effect without stockholder consent, poison pill plans can effectively prevent shareholders from even considering the merits of a takeover that is opposed by the board.[22] Accordingly, in an *amicus* brief submitted to the Court in *Household International*, the Commission expressed its concern over these plans. The Commission argued that poison pills may harm shareholders by restricting their opportunity to consider hostile tender offers and by limiting their ability to wage proxy contests.[23]

In at least two instances, corporations have adopted poison pill plans despite indications that there would be a substantial question as to whether a majority of the corporation's stockholders would support adoption of a poison pill, if given the opportunity to vote on the plan.[24] A "Shareholder Bill of Rights" recently adopted by the Council of Institutional Investors, whose members manage over $160 billion in assets, proclaims that "shareholders have a right to vote on . . . poison pills."[25] Members of Congress have similarly considered requiring shareholder approval of poison pills.[26]

In *Household International*, the Delaware Supreme Court determined that poison pills do not necessarily harm shareholders.[27] The court concluded that poison pills do not necessarily prevent stockholders from entertaining all tender offers, and may not change the structure of a company as much as other antitakeover measures that a board could legally implement without stockholder approval. The court also observed that these plans may deter partial and two-tier tender offers and ward off open market purchase programs that could deprive shareholders of larger control premiums. Accordingly, the court concluded that poison pills give a board of directors bargaining power that can be helpful in assuring that target shareholders receive a higher price for their shares. The court stressed, however, that a board of directors has a fiduciary duty to the corporation's shareholders when it is presented with a request to redeem the poison pill, and that the decision not to redeem a poison pill could be subject to further judicial scrutiny.[28] Other courts have upheld the issuance of poison pills under circumstances and on grounds similar to those of *Household International*.[29]

Not all applications of poison pills have, however, withstood challenge in the courts. In *Dynamics Corp. of America* v. *CTS Corp.*, a federal district court applying Indiana law enjoined CTS's first poison pill because it was "unreasonable in relation to the particular threat posed."[30] The Seventh Circuit affirmed that decision and indicated that managements adopting poison pills might not be able to satisfy their burden under the business judgment rule[31] unless the triggering event requires that a shareholder own more than 50% of the target's shares and the rights give shareholders no more for their shares than the highest price the majority shareholder paid for its shares.[32] In *Asarco, Inc.* v. *M.R.H. Holmes A Court*, a federal district court held that New Jersey law prohibited adoption of poison pill plans that caused unequal voting rights among holders of a single class of shares.[33] Similarly, courts

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[19] Both of these variations involve the distribution of "rights" that are nondetachable from the common stock until the triggering event occurs. Under "flip-over" plans, if the acquiring firm consummates a merger, substantial asset sale, or other combination, the shareholder can present the rights to the acquirer in exchange for a fixed dollar amount of securities of the acquiring firm at a price far below (usually half) the market price. *See, e.g., Household*, 500 A.2d at 1349; *Horwitz* v. *Southwest Forest Indus.*, 604 F. Supp. at 1132. Under "flip in" plans, the occurrence of a triggering event permits shareholders, except the bidder, to return their rights to the issuer in exchange for cash or short-term senior notes in amounts often well in excess of the market value of the pre-rights shares. *See, e.g., Dynamics Co. of America* v. *CTS Corp.*, No. 86-1601, slip op. at 14 (7th Cir. May 28, 1986).

[20] "Back end" plans are a particular type of "flip in" pill that require that the target's shares be tendered along with the rights, and provide that the person causing the rights to be triggered may not exercise those rights. *See, e.g., Revlon, Inc.* v. *MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 177 (Del. 1986); *Dynamics Corp. of America* v. *CTS Corp.*, No. 86C1624, slip op. at 5-6 (N.D. Ill. May 3, 1986), *aff'd on rehearing*, 86C1624 (N.D. Ill. June 20, 1986). The net financial effect of such a plan may be similar to exclusionary self-tenders that are prohibited by Commission regulation. *See* part III, *infra*. Other varieties of poison pills can also have the same financial effect. For a discussion of recent variations of poison pill plans see Corporate Control Alert, June 1986, at 1.

[21] *See, e.g.*, Jensen & Ruback, *The Market for Corporate Control: The Scientific Evidence*, 11 J. Fin. Econ. 5 (1983) and authorities cited therein; Ginsburg & Robinson, *The Case Against Federal Intervention in the Market for Corporate Control*, Brookings Rev. (Winter/Spring 1986), at 9.

[22] Judges of a Federal Court of Appeals have echoed many of the reservations expressed in this release:

> Personally, we are rather skeptical about the arguments for defensive measures. They strike us as giving too little weight to the effect of "defensive" measures in rendering shareholders defenseless against their own managements. (The shareholders of CTS were not asked to approve the poison pill.) We are especially skeptical about the arguments used to defend poison pills. If the present case is representative, the poison pill seems (as we shall see) more a reflex device of a management determined to hold on to power at all costs than a considered measure for maximizing shareholder wealth.

Dynamics Corp. of America v. *CTS Corp.*, No. 86-1601, slip op. at 9 (7th Cir. May 28, 1986) (Posner, J.).

[23] Brief of the Securities and Exchange Commission, *Moran* v. *Household International, Inc.*, 500 A.2d 1346 (Del. 1985) (poison pills raise the cost of forming a control block and evidence shows that control blocks increase the likelihood of a successful proxy contest). *See also Household*, 500 A.2d at 1355.

[24] *See Moran* v. *Household Int'l, Inc.*, 490 A.2d 1059, 1064 (Del. Ch.), *aff'd*, 500 A.2d 1346 (1985) (Proxy consultant predicted that shareholder approval of a fair price amendment, an antitakeover measure less inhibiting than a poison pill, would result in a close vote. Management elected to pursue the poison pill route, which does not require a vote, "in view of the predicted closeness of the [fair price] vote."); *Rorer Group, Inc. Retains Measure Against Takeovers*, Wall St. J., at 8 (May 29, 1985); *Rorer Holders Vote to Rescind Firm's 'Poison Pill' Rule*, Wall St. J., at 20 (May 9, 1985).

[25] Vise, *"Bill of Rights" Seeks to Boost Power of Shareholders*, Washington Post, April 13, 1986, p. F1.

[26] *See* H.R. 5693, 98th Cong., 2d Sess. (1984). *See also*, Note, *Protecting Shareholders Against Partial and Two-Tiered Takeovers: The "Poison-Pill" Preferred*, *supra* note 16, at 1964 n.2.

[27] 500 A.2d at 1354.

[28] "While we conclude for present purposes that the Household Directors are protected by the business judgment rule [in adopting the plan] that does not end the matter. The ultimate response to an actual takeover bid must be judged by the Directors' actions at that time, and nothing we say here relieves them of their basic fundamental duties to the corporation and its stockholders. Their use of the plan will be evaluated when and if the issue arises." *Id.* at 1357 (citations omitted). At that time, the Delaware court is likely to consider whether the application of the pill is " 'reasonable in relation to the threat posed.' " *Id.* at 1356 (citing *Unocal Corp.* v. *Mesa Petroleum*, 493 A.2d 946, 955 (Dell. 1985)).

[29] *See, e.g., Horwitz* v. *Southwest Forest Indus.*, 604 F. Supp. 1130 (D. Nev. 1985); *MacAndrews & Forbes Holding, Inc.* v. *Revlon, Inc.* 501 A.2d 1239, 1251 (Del. Ch. 1985), *aff'd*, 506 A.2d 173 (Del. 1985).

[30] *Dynamics Co. of America* v. *CTS Corp.*, No. 86C1624, slip op. at 32 (N.D. Ill. April 17, 1986), *aff'd*, No. 86-1601 (7th Cir. May 28, 1986). On appeal, the court found that the pill "effectively preclude[d] a hostile takeover, and thus allow[ed] management to take the shareholders hostage." No. 86-1601, slip op. at 16 (7th Cir. May 28, 1986). The district court has since refused to enjoin a second CTS poison pill, No. 86C1624 (N.D. Ill. June 20, 1986) (appeal pending). Unlike the initial rights plan, the second plan did not contain a "flip-in" provision which precluded the insurgent from conducting a proxy contest. Furthermore, the District Court noted that the second plan was the result of a more considered deliberative process by the Board of Directors.

[31] No. 86-1601, slip op. at 10-11 (7th Cir. May 28, 1986).

[32] *Id.*, slip op. at 16.

[33] 611 F. Supp. 468 (D.N.J. 1985).

have enjoined poison pill plans that created rights that could not be transferred with the underlying shares.[34]

Because poison pill plans are relatively new, there has been little research as to their consequences. One study of early plans suggests that poison pills harm stockholder interests and lead to management entrenchment.[35] A more recent study conducted by the Commission's Office of the Chief Economist ("OCE") examines the effects on share price of a larger and more recent set of poison pills and finds that the effect of these pills depends on the circurstances under which they are adopted.[36] For certain firms that were the subject of serious takeover speculation at the time their poison pill plans were adopted, the poison pills caused statistically significant price declines of about 2.4 percent. Poison pills adopted under other circumstances showed no statistically significant effect on share price. All of these findings should be interpreted in light of other research suggesting, in general, that antitakeover measures either reduce shareholder wealth or leave it unchanged.[37] At least one study, however, suggests that antitakeover measures approved by shareholders may increase shareholder wealth.[38]

There has also been substantial controversy as to the effectiveness of poison pills in deterring takeovers. Some commentators claim that poison pills erect virtually insurmountable obstacles to takeovers,[39] but there have been at least two takeovers ccmpleted despite the presence of poison pills.[40] An alternative measure of the effectiveness of poison pills is the number of takeovers that would have occurred but for the presence of these plans, or any changes in takeover premiums resulting from poison pill plans. The Commission invites comment as to whether and how the effectiveness of these plans can be measured.

The Commission also observes that the regulation of poison pills has to date been a subject of state, not federal, oversight. Because federal regulation of poison pills could intrude on traditional state functions and preempt state corporation law, the benefits of state involvement in this area must be considered when weighing the appropriateness of any federal action.

In light of the quick evolution, rapid spread, and deep debate over the consequences of poison pill plans, the Commission seeks comment as to the extent to which the incidence of poison pill plans is increasing, the circumstances under which corporations adopt and exercise such plans, the number of corporations that can be expected to adopt poison pills in the future, and the types of pills likely to be adopted. The Commission also seeks comment as to the effectiveness of poison pills in deterring takeovers, and the strategies that bidders can use to circumvent current and future poison pill plans.

The Commission further seeks comment regarding the investor protection issues that poison pills raise and their costs and benefits in general. Because poison pill plans are adopted without stockholder approval, the Ccmmission seeks comment regarding the possibility that these plans are used to entrench management, and the effectiveness of state law fiduciary obligations imposed on directors to consider redemption of the poison pills.[41] The Commission also seeks comment on the consequences of poison pills on contests for corporate control that do not otherwise involve tender offers, including, in particular, proxy contests.

Many concerns regarding poison pill plans might be resolved if these plans are subject to stockholder approval.[42] Such a requirement could be imposed at either a state or federal level. The Commission requests comment as to the appropriateness of federal intervention into the area of poison pills, an area that has to date been the province of state corporation law. In the event that federal action is warranted, the Commission seeks comment as to the appropriate form of the response. In light of the market's ability to evolve new instruments designed to avoid the restraints imposed by regulation, the Commission also seeks comment on the probable effectiveness of any suggested federal action, and the likely market response to such regulatory initiatives.

III. Self-Governance Exemptions

Self-governance exemptions are found in both state and federal law. They are particularly common in state law where corporation codes frequently establish general rules from which corporations can exempt themselves by appropriate stockholder and/or director action.[43] Certain state antitakeover statutes also contain self-governance exemptions.[44] Self-governance exemptions are also found in the federal securities laws, where regulated entities can, by appropriate stockholder or director action, exempt themselves from certain provisions of the Investment Company Act.[45] The Trust Indenture Act contains

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[34] *Minstar Acquiring Corp.* v. *AMF Inc.*, 621 F. Supp. 1252 (S.D.N.Y. 1985) (New Jersey law); Unilever Acquisitions Corp. v. *Richardson-Vicks. Inc.*, 618 F. Supp. 407 (S.D.N.Y. 1985) (Delaware law).

[35] Malatesta & Walkling, *The Impact of "Poison Pill" Securities on Shareholder Wealth* (Dec. 1985) (unpublished manuscript).

[36] Office of the Chief Economist, Securities and Exchange Commission, *The Economics of Poison Pills* (Mar. 5, 1986).

[37] *See, e.g.*, Bradley & Wakeman, *The Wealth Effects of Targeted Share Repurchases*, 11 J. Fin. Econ. 301 (1983); Dann & DeAngelo, *Standstill Agreements, Privately Negotiated Stock Repurchases, and the Market for Corporate Control*, 11 J. Fin. Econ. 275 (1983).

[38] *See* Linn & McConnell, *An Empirical Investigation of the Impact of "Antitakeover Amendments" on Common Stock Prices*, 11 J. Fin. Econ. 361 (1983). *But see* DeAngelo & Rice, *Antitakeover Charter Amendments and Stockholder Wealth*, 11 J. Fin. Econ. 329 (1983).

[39] *A "Poison Pill" That's Super-Lethal*, Business Week, at 93 (Oct. 1, 1984); Ferrara & Phillips, *Opposition to Poison Pills Is Mounting*, 7 Legal Times 13 (Oct. 15, 1984).

[40] Pantry Pride commenced and succeeded with a tender offer for Revlon despite the existence of a poison pill. Similarly, Sir James Goldsmith commenced a tender offer for Crown Zellerbach even though the company had adopted a poison pill plan. Although Goldsmith terminated his tender offer, he proceeded to acquire control of the company through open market purchases.

[41] *See* Note, *Protecting Shareholders Against Two-Tiered and Partial Takeovers: The "Poison Pill" Preferred*, *supra* note 16, at 1968–72.

[42] *See* Internal Transfers, *supra* note 11.

[43] Self-governance exemptions are found in the Model Business Corporation Act, Delaware's General Corporation Law, and New York's and California's corporation codes, as well as in the corporation codes of all other states. *See, e.g.*, Model Business Corp. Act Ann. Sections 6.30(a), 8.03(b)–(c) (3d ed. 1985) (shareholders have no preemptive rights unless provided in articles of incorporation; after shares are issued, board may not change range for size of board or from fixed to variable sized board without shareholder approval); Del. Code Ann. tit. viii, section 102(b)(4) (1974) (stockholders may, by amendment to articles of incorporation, impose super majority provisions for taking corporate or board actions); N.Y. Bus. Cor . Law section 908 (McKinney 1986) (corporation may give guarantee not in furtherance of a corporate purpose if approved by two-thirds of outstanding shares); Cal. Corp. Code section 700(a) (West 1977) (each share, regardless of class, entitled to one vote unless otherwise provided in articles).

In addition, in response to a perceived "insurance crisis" that has made directors and officers liability insurance either unobtainable or relatively expensive, Delaware has recently added a new section 102(b)(7) to its General Corporation Law. *See* S. Bill No. 533 (June 10, 1986). Section 102(b)(7) authorizes charter amendments that would relieve directors of monetary liability for certain breaches of the duty of care. Because section 102(b)(7) is an enabling statute, Delaware corporations must obtain board and shareholder approval before such relief can be made available.

[44] *See, e.g.*, Ohio Rev. Code Ann. Section 1701.831(a) (Page 1983); Pa. Stat. Ann. tit. 15, § 1910a (Purdon 1984); 1983–85 Wis. Legis. Serv. 200, Section 7 (West); N.Y. Bus. Corp. Law § 912(d)(3) (McKinney 1986).

[45] Section 13(a) of the Act provides that a registered investment company may not change

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a prohibition that may be waived by debt holder action.[46] The Commission has also proposed and adopted rules that rely on principles of corporate self-governance to exempt regulated persons from various statutory or regulatory proscriptions.[47]

The Commission seeks public comment on the advisability of a rule whereby stockholders and directors would be permitted to decide for themselves whether they require certain protections of the Williams Act. The Commission seeks public comment on this concept in two contexts: (1) As applied to the "all holders" rule, and (2) as applied to other provisions of the tender offer rules.

A. The "All Holders" Requirement

The recently adopted "all holders" rule prohibits exclusionary issuer and third-party tender offers. It requires that tender offers of issuers and third-party bidders must be open to all holders of the class of securities subject to the tender offer.[48]

As applied to the "all holders" rule, a self-governance provision could, for example, provide that corporations may exempt themselves from the rule if their charters are amended, in accordance with state law, expressly to authorize exclusionary tender offers. A charter provision authorizing such an exemption could cover either issuer or third-party tender offers for such issuer, or it could apply to both issuer and third-party tender offers. The charter provision could also define particular circumstances under which issuer or third-party exclusionary offers would continue to be prohibited.

The Williams Act and the Commission's tender offer rules currently operate as rules of general applicability with no provision for exemptions or modifications by stockholder or director action. Tender offers are thus conducted in accordance with uniform rules, and all participants are equally subject to regulations that Congress and the Commission have determined to be in the public interest.

A self-governance exemption would alter the current structure of the Commission's tender offer rules by allowing individual corporations, within bounds set by the Commission, to modify the protections of the rules to suit their particular circumstances. The Commission requests comment on whether the public interest would be well served if stockholders and directors of individual corporations are permitted, under certain circumstances, to craft safeguards designed to suit the specific circumstances of individual corporations. A body of recent research suggests that self-determination in matters related to corporate governance yields benefits that may not be as readily attainable under rules of general applicability.[49] Thus, without a self-governance exemption, there is a possibility that the "all holders" rule might impose protections on certain corporate investors who neither desire nor benefit from safeguards that might be reasonable for investors in other corporations that are subject to the "all holders" rule. A self-governance exemption might thus help minimize whatever ancillary burdens are imposed by an "all holders" rule without diminishing the rule's general protections.

The Commission seeks comment as to the advisability, costs, and benefits of a self-governance exemption to the "all holders" rule. The Commission also seeks comment regarding the extent to which experience with self-governance exemptions at the state or federal level provides guidance relevant to the adoption of such a self-governance exemption. Empirical evidence related to the costs and benefits of self-governance exemptions will be particularly useful.[50]

The Commission also seeks comment regarding the mechanics involved in the implementation of a self-governance exemption, as well as comment regarding alternative formulations of a rule that might implement a self-governance exemption. In particular, the Commission seeks comment as to whether it should rely on the rules for charter amendments in the issuer's corporate domicile, whether it should condition the exemption on subsequent enactment by the legislature of the issuer's corporate domicile of rules for charter amendments that are specifically addressed to the proposed self-governance exemption, or whether the Commission should provide separate criteria for the adoption of any exemption. Examples of such criteria include supermajority requirements, requirements for periodic shareholder reaffirmation, or provisions that allow

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from a diversified to a non-diversified company, deviate from its stated investment policy, or change its business so as to cease to be a registered investment company, "unless authorized by the vote of a majority of its outstanding voting securities." 15 U.S.C. 80a-13. Section 23(b) permits the sale of common stock of a closed-end investment company at less than current net asset value only "with the consent of a majority of its common stockholders." 15 U.S.C. 80a-23(b). Section 61(a)(3)(A) requires a majority of directors and shareholders to authorize the issuance of certain debt accompanied by warrants, options, or rights to convert. 15 U.S.C. 80a-61(3)(A).

The Investment Advisers Act contains statutory provisions that can be waived by client consent. Section 205(2) of the Act provides, in substance, that an investment adviser may not assign an investment advisory contract without the consent of the party being advised. 15 U.S.C. 80b-5(2). Section 206(3) of the Act provides that an investment adviser, without obtaining the informed prior consent of his client, may not sell securities to or purchase securities from the client as principal for the adviser's own account, or as agent for another client. 15 U.S.C. 80b-6(3).

[46] Section 316 of the Act provides that trust indentures qualified under the Act may authorize a simple majority of the indenture security holders to consent to a waiver of a past default, and a 75 percent majority to consent to a postponement of interest payments for a period of three years from their due date. 15 U.S.C. 77ppp(a).

[47] Rule 16b-3 under the Securities Exchange Act of 1934 provides an exemption for directors, officers, and principal stockholders from liability for short swing profits under section 16(b) of the Act if their transactions occur pursuant to a plan approved by the company's security holders that otherwise meets the requirements of the rule. 15 CFR 240.16b-3. Rule 12b-1 under the Investment Company Act of 1940 provides that mutual funds may act as distributors of their own securities if they do so pursuant to a plan approved by a majority of their security holders that otherwise meets the requirements of the rule. 15 CFR 270.12b-1(b)(1). One of the alternatives propcsed by the Commission for Rule 14a-8 under the Securities Exchange Act of 1934 would have allowed issuers and their security holders to adopt their own procedures governing access to the issuer's proxy statement, subject to certain minimums prescribed by the Commission. See SEC Release No. 34-20091, 48 FR 38218 (1983). There was some support, mostly from issuers, for this self-governance alternative, but many commentators were concerned that it would create problems of administration in that there would not necessarily be uniformity or consistency among different issuers in determining whether security holder proposals would be included in the issuer's proxy materials. *Id.* The Commission decided not to adopt this self-governance proposal in part because of overwhelming support for an alternative that was subsequently adopted. *Id.*

[48] Release No.34-23421 (July 11, 1986) [51 Fed. Reg. 25873] (announcing adoption of Rule 14d-10 and amendments to Rules 13e-4, 14d-7, and 14e-1(b)). Although the "all holders" principle is incorporated in more than one rule, for ease of reference this release refers to an "all holders" rule.

[49] *See, e.g.*, Baysinger & Butler, *Antitakeover Amendments, Managerial Entrenchment and the Contractual Theory of the Corporation*, 71 Va. L. Rev. 1257, 1290 ff. (1985); Baysinger & Butler, *The Role of Corporate Law in the Theory of the Firm*, 28 J.L. & Econ. 179 (1985); Butler, *Nineteenth-Century Jurisdictional Competition in the Granting of Corporate Privileges*, 14 J. Legal Stud. 129 (1985); Coase, *The Problem of Social Cost*, 3 J.L. & Econ. 1 (1960); Dodd & Leftwich, *The Market for Corporate Charters: Unhealthy Competition vs. Federal Regulation*, 53 J. Bus. 259 (1980); Easterbrook, *Managers' Discretion and Investors' Welfare: Theories and Evidence*, 9 Del. J. Corp. Law 540 (1984); Fischel, *The Corporate Governance Movement*, 35 Vand. L. Rev. 1259 (1982); Fischel, *The Race to the Bottom Revisited: Reflections on Recent Developments in Delaware's Corporation Law*, 76 Nw.U.L. Rev. 913 (1982); Oesterle, *Target Managers as Negotiating Agents for Target Shareholders in Tender Offers: A Reply to the Passivity Thesis*, 71 Corn. L. Rev. 53, 65 ff. (1985); Romano, *Some Pieces of the Incorporation Puzzle*, 1 J.L., Econ. & Org. 225 (1985).

[50] For examples of such research, see Dodd & Leftwich and Romano, *supra* note 49.

for exemptions to be approved by stockholder action without prior board approval.

B. Self-Governance Provisions Applied to Other Tender offer Regulations

The Commission also seeks comment on the concept of adopting self-governance exemptions to tender offer rules other than the "all holders" provision. The Commission has not determined which, if any, tender offer rules are appropriate candidates for self-governance exemptions, and seeks comment identifying rules that are either particularly appropriate or inappropriate candidates for self-governance exemptions. The Ccmmission requests that comments address the costs and benefits of providing self-governance exemptions to specific tender offer rules and, as in the case of the "all holders" rule, address: (1) Relevant analogues and empirical evidence; (2) Specific language for suggested exemptions; and (3) Whether the exemption should rely on the charter amendment provisions of the issuer's domicile, or on some other rule of corporate self-governance.

In connection with such proposals, the Commission observes that members of Congress have introduced numerous amendments to the Williams Act.[51] Some of these proposals suggest congressional support for time deadlines and thresholds different than those currently found in the statute.[52] Corporate self-governance exemptions could allow issuers to elect deadlines and thresholds within ranges defined by currently pending legislation.[53] In addition, some business organizations and academics have proposed takeover rules that are incompatible with the Williams Act, but that could potentially be adopted in the form of self-governance exemptions.[54] The Commission invites comment regarding the advisability of adopting or recommending to Congress self-governance exemptions that would permit corporations to adopt these or other takeover rules to govern contests for corporate control.

By the Commission.

Jonathan G. Katz.

Secretary.

July 31, 1986.

[FR Doc. 86-17587 Filed 8-4-86; 8:45 am]

BILLING CODE 8010-01-M

[51] *E.g.*, S.286, 99th Cong., 1st Sess. (1985) (Sen. Riegle); S.631, 99th Cong., 1st Sess. (1985); (Sen. Chafee); S.706, 99th Cong., 1st Sess. (1985) (Sen. Proxmire); S.860, 99th Cong., 1st Sess. (1985) (Sen. Metzenbaum); S.1882, 99th Cong., 1st Sess. (1985) (Sen. Metzenbaum); S.1907, 99th Cong., 1st Sess. (1985) (Sens. D'Amato & Cranston); H.R. 1480, 99th Cong., 1st Sess. (1985) (Rep. Markey). *Cf.* S.1695, 99th Cong., 1st Sess. (1985) (Sen. Specter) (to prohibit enforcement of all holders rule).

[52] For example, Congressman Markey's bill, H.R. 1480 would require that all tender offers (other than issuer offers not made in response to an outside offer) remain open for 60 business days. *See* H.R. 1480, section 104(d), 99th Ccng., 1st Sess. (1985). The legislation introduced by Senators D'Amato and Cranston would extend the minimum offering period for tender offers, now 20 days, to 30 days for "any-and-all" offers and to 40 days for partial and two-tiered offers. S.1907, section 2(a)(1), 4(a)(4), 99th Cong., 1st Sess. (1985).

[53] Self-governance provisions could, for example, allow directors to recommend and stockholders to approve minimum offering periods for tender offers for their corporation's shares, provided that those periods were no shorter than the current 20-day period and no longer than the 30-day "any-and-all" and 40-day partial and two-tier periods proposed in the D'Amato-Cranston bill.

[54] *See, e.g.*, Bebchuck, *Toward an Undistorted Choice and Equal Treatment in Corporate Takeovers*, 98 Harv. L. Rev. 1695 (1985) (proposing that the fate of all offers aimed at acquiring a controlling interest (*e.g.*, above 20 percent) be decided upon a poll of shareholders, regardless of whether they tender their shares, and that nontendering shareholders be given certain immediate takeout or redemption rights); Business Roundtable, Statement of Principles on Hostile Takeover Abuses (undated) (proposing that no one may purchase more than 15 percent of the voting securities of a company without board or shareholder approval and that all purchasers of more than 15 percent must offer to purchase all voting securities in a tender offer).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM86-7-000]

Compression Allowances and Protest Procedures Under NGPA Section 110

Issued: July 31, 1986.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations issued under section 110 of the Natural Gas Policy Act of 1978 (NGPA) concerning production-related cost. 18 CFR 271.1104 (1986), 49 FR 49625 (December 21, 1985). The Commission proposes that first sellers be allowed under section 110 of the NGPA to recover the fuel or power costs incurred to drive compressors constructed prior to enactment of the NGPA. The Commission also proposes to provide parties an opportunity to protest allowances for delivery of natural gas previously presumed authorized by "area-rate" clauses in gas contracts.

DATES: An original and 14 copies of comments must be filed by September 4, 1986. A public hearing will be held if requested. Requests for a public hearing must be submitted by September 4, 1986.

ADDRESS: All filings should refer to Docket No. RM86-7-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Peter J. Roidakis, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8224.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations, 18 CFR 271.1104 (1986), issued under section 110 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3320 (1982). In particular the Commission proposes to allow a first seller to recover the fuel or power costs incurred in driving a compressor constructed on or before November 8, 1978. The Commission also proposes to establish procedures to permit any affected person to rebut the presumption that an area rate clause in a natural gas contract was intended to permit collection of production-related costs for delivery of natural gas. In so doing, the Commission is implementing the decision in *Texas Eastern Transmission Corporation v. FERC (Texas Eastern)*, 769 F.2d 1053 (5th Cir. 1985), *cert. denied*, 106 S.Ct. 1967 (1986).

II. Background

In Order No. 94-A,[1] the Commission implemented section 110 of the NGPA by promulgating regulations in 18 CFR 271.1104. These regulations allow first sellers to recover certain costs incurred to perform production-related services and define the costs a first seller may recover.[2] The Commission also established generic delivery and compression allowances.[3] *Texas Eastern* involved consolidated appeals[4] challenging, among other things, the Commission's implementation of NGPA section 110 in Order No. 94-A and related orders. The court in *Texas Eastern* affirmed the Commission's

[1] Order No. 94-A, 48 FR 5152 (Feb. 3, 1983), FERC Stats. & Regs. [Reg. Preambles 1982-1985] ¶ 30,419.

[2] 18 CFR 271.1104(c)(7) (1985).

[3] Order No. 334, 48 FR 44495 (Sept. 29, 1983), FERC Stats. & Regs. [Reg. Preambles 1982-1985] ¶ 30,495.

[4] *Texas Eastern*, 769 F.2d at 1058 n.1.

production-related cost regulations in all but two respects. The court instructed the Commission to amend its rules to allow a first seller with a pre-NGPA compressor to collect a compression allowance for the costs of fuel or power required to drive the compressor from the same date and to the same extent such costs are recoverable for the post-NGPA compression facility. In addition, the court also directed the Commission to provide for a protest procedure, modeled on those established in Order No. 23–B,[5] to allow parties the opportunity to show a particular area rate clause did not authorize the recovery of a delivery allowance.[6] The Commission now proposes to modify its regulations consistent with the directives of the court in *Texas Eastern*.

III. Discussion

A. The Commission first proposes to amend its regulations at § 271.1104(d)(1)(iv) which established a generic approach for the computation of NGPA section 110 cost allowances for compression facilities. The current regulations exclude a first seller that operates a compression system for which construction commenced on or before November 8, 1978 (pre-NGPA) from collecting compression allowances that are allowed a first seller who operates a system for which construction commenced on or after November 9, 1978 (post-NGPA). The court in *Texas Eastern* agreed with the Commission that sellers were adquately compensated for pre-NGPA compression costs under Natural Gas Act area and nationwide rates, at least as to the recovery of capital costs. As for recovery of current expenditures, however, such as fuel and power costs of compression, the court found no sound basis for the exclusion of fuel and power costs for pre-NGPA systems. The court therefore instructed the Commission "to modify its order to allow for the recovery of fuel and power costs with respect to pre-NGPA [compression] systems." [7] Accordingly, the Commission proposes to amend § 271.1104(d)(1)(iv) to provide a compression allowance for fuel and power costs incurred in driving a compressor for compression facilities constructed on or before November 8, 1978.

The Commission proposes to require certain sellers with pre-NGPA compressors to amend their blanket affidavits [8] covering notices of rate change under the Natural Gas Act before collecting fuel and power costs related to those compression facilities constructed prior to the NGPA. This filing is consistent with current requirements in § 154.94 (h) and (k). Sellers already exempted from filing rate schedules [9] are exempted from the blanket affidavit requirement proposed.

Retroactive fuel and power cost allowances for pre-NGPA compression facilities will be made payable in a lump sum within 60 days after a bill is served on the purchaser. It is not anticipated that the retroactive fuel and power costs for pre-NGPA compression will be so large as to make lump sum payment unduly burdensome. The Commission's Order No. 94–A rules have always provided that to obtain a compression allowance the contract must "expressly authorize" its collection. The Commission believes that most contracts are not likely to contain such a contract provision "expressing an amount, or a method for determining an amount, that the purchaser agrees to pay the seller for providing the specified service" for pre-NGPA compressors. (*See* 18 CFR 271.1104(c)(4)(ii)(A) (1986).) For this reason, the allowance will be collectible under relatively few contracts. This is not the result of any new requirement promulgated in this rule, however, but arises from the pre-existing requirements of Order No. 94–A, which were affirmed by the court in *Texas Eastern*.

B. Commission regulations allow production-related cost allowances that would otherwise exceed the maximum lawful price to be collected by a first seller when two conditions are satisifed: The production-related cost is actually borne by the seller,[10] and the seller is expressly authorized to be compensated for bearing that production-related cost.[11] Under the Commission's regulations, evidence that a buyer has "expressly authorized" a first seller to collect a *delivery* allowance may be established by an area rate clause in a natural gas sales contract, for all NGPA categories except sections 105 and 106(b).[12] The Commission adopted the area rate clause presumption for delivery allowances based on the rationale that Commission practice had "allowed producers to file for and collect gathering and delivery allowances if 'contractually authorized.' [footnote omitted] . . . Parties included an area rate clause in their contracts in the expectation of receiving any gathering or delivery adjustment that the Commission allowed." [13] Since area rate clauses may "vary widely in language and intent," the court found the lack of a clear protest procedure "troublesome . . . because of the paramount importance of intent under individual contracts . . . ." [14]

The court therefore directed the Commission to establish a "protest procedure to allow parties the opportunity to show that the intent of the parties with respect to certain area rate clauses is inconsistent with the general rules [in the regulations]." [15] This would assure that the presumption now contained in the rule, that the presence of an area rate clause was intended to permit the collection of production-related delivery costs, is rebuttable. Accordingly, the Commission proposes to amend § 271.1104 of its regulations to provide Commission staff, pipeline purchasers, and "[o]ther parties in interest including state commissions, local distribution companies and other aggrieved parties" [16] the opportunity to address whether the parties' intent diverged from the general presumption.

The Commission proposes to provide for a protest procedure similar to that established in Order No. 23–B, as the court suggested. Under the Order No. 23–B procedures, parties in interest could protest and petition the Commission for a specific determination

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[5] Order No. 23–B, "Order Adopting Final Regulations Establishing Protest Procedures Regarding Blanket Affidavit Filings and Interim and Retroactive Collection Filings," 44 FR 38834 (July 3, 1979), FERC Stats. and Regs. [Reg. Preambles 1977–1981] ¶ 30,065; and *reh'g of Order No. 23–B*, 44 FR 46174 (Aug. 17, 1979), FERC Stats. & Regs. [Reg. Preambles 1977–1981] ¶ 30,073. delivery

[6] *Texas Eastern*, 769 F.2d at 1065 (as a general matter, the court found "unassailable" the Commission's argument that "prior experience under the Gas Act, 15 U.S.C. 717 *et seq.*, supports the construction of area rate clauses as authorizing delivery allowances" but not other allowances). *Id.*

[7] *Id.*

[8] *See* 18 CFR 154.94(k) (1986), and Appendix B to § 154.94(k). FERC Stats. & Regs. ¶ 19,194 at 12,791–3 to 12,791–4.

[9] *See* 18 CFR 154.92(c) (1986).

[10] 18 CFR 271.1104(a)(2) (1986).

[11] 18 CFR 271.1104(a)(3) (1986).

[12] 18 CFR 271.1104(c)(4)(ii)(B) (1986).

[13] Order No. 94–A, "Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act," 48 FR 5152 (Feb. 3, 1983), FERC Stats. & Regs. [Reg. Preambles 1982–1985] ¶ 30,419 at 30,360.

[14] *Texas Eastern*, 769 F.2d at 1065.

[15] *Id.* regulations to provide

[16] Order 23–B, 44 FR 38834 (July 3, 1979), FERC Stats. & Regs. [Reg. Preambles 1977–1981] at 30,451 (*quoting* Order No. 23, "Final Regulations Amending and Clarifying Regulations Under the Natural Gas Policy Act and the Natural Gas Act," 44 FR 16895, 16904 (March 20, 1979)). *See also*, Pennzoil Oil Company v. FERC, 645 F.2d 360, 390–393 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982).

as to whether a particular area rate clause constitutes the requisite authority to charge and collect NGPA rates. In addition, parties in interest will now have the opportunity to dispute whether a particular area rate clause constitutes the requisite authority to charge and collect a delivery allowance under NGPA section 110.

The Commission proposes that the rule would apply to all NGPA categories of gas except sections 105 and 106(b), since all gas sold under NGPA sections 105 and 106(b) is excluded from the presumption that the area rate clause evidences the purchaser's agreement to pay a delivery allowance.[17]

Rather than require a multitude of filings of area rate clause contract language from numerous producers, the Commission proposes to require a limited number of filings by interstate pipelines. The pipeline filings will be due 60 days after publication of the final rule in the **Federal Register.** Each interstate pipeline would submit to the Commission lists of producer-sellers that assert contractual authority to collect delivery allowances pursuant to an area rate clause and identify the contracts relied upon by date and contract number, or other satisfactory identification. One list would enumerate those contracts with sellers whose interpretation is that the area rate clause encompasses a delivery allowance the pipeline supports. The second list would state those contracts with sellers whose interpretation that the area rate clause encompasses a delivery allowance the pipeline disputes and protests. In addition, pipelines must file data to support the pipeline's position and any information submitted to the pipeline by the first seller under § 271.1104(f) of the Commission's regulations. To minimize the filing burden, pipelines would be permitted to refer to specific data already on file in PGA proceedings or elsewhere with the Commission concerning producers who claim contractual rights to section 110 costs, rather than file the data anew. Pipelines would update the lists as needed.

The pipeline listings would be published in the **Federal Register** and other parties may protest the producer's authority to collect a section 110 allowance under any particular area rate clause. Each protest, whether by the pipeline or by a third party, in turn would be noticed and transmitted to the Chief Administrative Law Judge for assignment to an Administrative Law Judge. The protests would then be set for hearing absent summary disposition.

The standards developed in the Order No. 23 series of orders and the case law interpreting those orders would apply to the summary disposition and hearing process established under this rule. Particularly with regard to overcoming the presumption that an area rate clause "expressly authorizes" a delivery allowance, the Commission intends to apply the standards of *Pennzoil Co.* v. *FERC*, 645 F.2d 360 (5th Cir. 1981) (*Pennzoil I*) and *Pennzoil Co.* v. *FERC*, 789 F.2d 1128 (5th Cir. 1986) (*Pennzoil II*), insofar as they are applicable.

If the contracting parties agree that they intended their area rate clause to expressly authorize a delivery allowance, a third party protester will have the burden of coming forward with substantial evidence of the lack of contractual authority to overcome the presumption that the contracting parties' assertion regarding their intent is accurate. This does not *negate* the parties' mutual assertion of intent, however, but merely "bursts the bubble" of the presumption favoring their interpretation. Evidentiary weight may still be given to the contracting parties' mutual assertions and to the contractual language in reaching a decision.

If the contracting parties cannot agree as to their intent, somewhat different principles would apply. In such circumstances under Order No. 23, the burden of proof would rest on the seller since it is seeking the rate increase. *Pennzoil II* at 1133 n.12 citing *Pennzoil I* at 370. This is because the presumption only arose under Order No. 23 when the contracting parties were in agreement.[18] Under Order No. 94–A, however, the presumption for collecting NGPA section 110 delivery allowances arises from the Commission's practice [19] and not from the agreement of the contracting parties. Hence, the presumption would exist with or without the mutual agreement of the parties. If the parties to the contract are not in agreement, evidence submitted by the purchaser that it did not agree to pay the delivery allowance through its area rate clause would be taken into account in determining if the purchaser had made a showing of substantial evidence sufficient to overcome the presumption.

A showing of substantial evidence amounts to more than a "scintilla" of evidence; it must be such that a reasonable man could infer that contractual authority does not exist. The Commission's intent is to conform to the Thayer or "bursting bubble" theory of presumptions as applied by the court in *Pennzoil II*. Under that theory, the presumption is dispelled upon the "introduction of evidence which would support a finding of the nonexistence of the presumed fact . . . ." [20] This is the standard an objecting party—whether a third party, a party to the contract, or staff—must meet in order to overcome the presumption that area rate clauses expressly authorize the collection of a delivery allowance. Once such evidence is presented, and the presumption is overcome, the burden shifts to the seller seeking the allowance to establish the fact that there exists express contractual authority for such an allowance. Evidentiary weight may still be given to the parties' assertions and to the contractual language in reaching a decision. This is consistent with the two *Pennzoil* decisions.[21]

The Commission seeks comments on the application of the evidentiary standards as proposed, and on any other related issue.

IV. Initial Regulatory Flexibility Analysis

Whenever the Commission is required by section 553 of the Administrative Procedure Act (APA) [22] to publish a general notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA) [23] to prepare and make available for public comment an initial regulatory flexibility analysis. The analysis must describe the impact the proposed rule will have on small entities. The broad purpose of the RFA is to ensure more careful and informed agency consideration of rules than may significantly affect small business and small government entities and to encourage cost-benefit analyses

[17] 18 CFR 271.1104(c)(4)(ii)(B) (1986).

[18] Order on Rehearing of Order No. 23–B, 44 FR 46174 (Aug. 17, 1979), FERC Stats. & Regs. [Reg. Preambles 1977–1981] ¶ 30,073 at 30,475–76 ("[W]hen a pipeline and a producer assert in a filing to the Commission that a particular contract authorizes the collection of an NGPA maximum lawful price, the Commission will assume that assertion is accurate. If nothing more is shown, that presumption will stand.")

[19] The Commission's practice under the Natural Gas Act was to allow area rate clauses to trigger the applicable Commission-established just and reasonable rate which included "the expectation of receiving any gathering or delivery adjustment that the Commission allowed." This expectation was codified in the presumption of express authorization of delivery allowances under area rate clauses in 18 CFR 271.1104(c)(4)(ii)(B) (1986). *See* FERC Stats. & Regs. [Reg. Preambles 1882–1985] ¶ 30,419 at 30,360

[20] *Pennzoil II* at 1138 *quoting* 10 *Moore's Federal Practice* . . . note 24, § 301.04[2] at III–19 (*citing* Thayer, *A Preliminary Treatise on Evidence at the Common Law*, at 352 (1898).

[21] *See Pennzoil I* at 370, and *Pennzoil II* at 1133, n.12 and at 1138–39.

[22] U.S.C. 553 (1982).

[23] U.S.C. 601–612 (1982).

of these rules as well as the agency's consideration of alternative approaches that may better resolve any unnecessarily costly or adverse effects on these small entities. The Commission is not required to make an RFA analysis, however, if it certifies that a rule "will not, if promulgated, have a significant economic impact on a substantial number of small entities."[24].

In this preamble the Commission presents its reasons for this agency action, its objective and the legal basis for this rulemaking. As discussed, the proposed rule would allow small producers to recover the fuel or power costs in driving certain compressors and establishes procedures to permit any affected person to rebut the presumption that an area rate clause in a natural gas contract permits collection of production-related costs.

This rule could affect approximately 10,000 natural gas producers, a significant proportion of which would probably be classified as small businesses. [25] However, the Commission has attempted to minimize any disproportionate burden the proposal would have on small producers. The proposal does require producers to amend their blanket affidavits covering notices of rate change, but the Commission regulations relieving small producers from most filing requirements are not affected, [26] and remain applicable. Similarly, the Commission does not impose any reporting requirements on producers under the protest procedures. Instead, all reporting requirements are imposed on pipeline-purchasers. A producer becomes involved in a particular proceeding only after a protest is lodged. Furthermore, in proposing protest procedures, the Commission is attempting to satisfy the directive of the United States Court of Appeals for the Fifth Circuit in *Texas Eastern*.

The Commission believes the rule, as proposed, represents a fair balance that would satisfy the mandate of the court and fulfill the purpose of the Regulatory Flexibility Act. The Commission does not foresee that many small producers will need to participate in the protest procedures because any amounts in controversy are likely to be relatively small and most small producers will negotiate any disagreements over contractual intent with the pipeline. In addition, the Commission does not believe that participation in the protest procedures will be unduly burdensome or costly. For these reasons, the Commission certifies that the rule "will not, if promulgated, have a significant economic impact on a substantial number of small entities."

[24] 5 U.S.C. 605(b) (1982).

[25] 5 U.S.C. 601(c), citing to section 3 of the Small Business Act, 1.5 U.S.C. 632 (1982). Section 3 of the Small Business Act defines small business concern as a business which is independently owned and operated and which is not dominant in its field of operation.

[26] 18 CFR 157.40 (1986).

V. Paperwork Reduction Act Statement

The information collection provisions in this proposed rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [27] and OMB's regulations. [28] Interested persons can obtain information on information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (Attention: Peg Covello, Energy Validation Data Branch, (202) 357–5402). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for Federal Energy Regulatory Commission).

VI. Comment Procedures

The Commission invites interested persons to submit written comments, data, views, and other information concerning the matters set out in this notice. An original and 14 copies of such comments should be filed with the Commission by September 4, 1986. Comments should be submitted to the Office of the Secretary, Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM86–7–00. All written submissions will be placed in the Commission's public files and will be available for public inspection through the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

In addition, an opportunity for a public hearing to receive oral comments will be afforded, if requested, in accordance with section 502(b) of the NGPA. Any person requesting an opportunity to appear to give oral comments must file with the Secretary a request to do so by September 4, 1986. If any requests for a hearing are received, a notice scheduling a public hearing will be published in the **Federal Register** at a later date.

[27] U.S.C. 3501–3520 (1982).

[28] 5 CFR 1320.12 (1986). the proposed

List of Subjects in 18 CFR Part 271

Natural gas, Production-related costs.

In consideration of the foregoing, the Commission proposes to amend Part 271, Chapter I, Title 18, Code of Federal Regulations as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

1. The authority citation for Part 271 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Administrative Procedure Act, 5 U.S.C. 553 (1982), unless otherwise noted.

2. In § 271.1104, paragraph (d)(1)(iv) is revised to read as follows:

§ 271.1104 Production-related costs.

* * * * *

(d) *Amounts necessary to recover production-related costs.*—(1) *General rule.* * * *

(iv) *For compression facilities.* (A) *For recent compression facilities.* For compressing natural gas by compressor facilities, the construction of which commenced on or after November 9, 1978, used to effectuate delivery of such gas to any interstate pipeline, intrastate pipeline, local distribution company or any person for use by such person, the seller may collect an amount not to exceed:

(*1*) Six cents ($0.06) per MMBtu for each qualified stage of compression set at a ratio of 3.5 to 1 (representing the overall compression ratio of the outlet pressure of the last stage of compression to the inlet pressure of the first stage of compression), not to exceed three stages; plus

(*2*) The cost of fuel or power to drive the compressor.

(*3*) For purposes of the compression allowance under this clause, "construction" of facilities includes the complete and necessary replacement of old facilities with new facilities and the necessary addition of any new stage of compression to existing facilities.

(B) *For old compression facilities.*—(*1*) *Authority for collecting the allowance.* If expressly authorized pursuant to paragraph (c)(4)(ii)(A) of this section, for compressing natural gas by compressor facilities, the construction of which commenced on or before November 8, 1978, used to effectuate delivery of such gas to any interstate pipeline, intrastate pipeline, local distribution company or any other person for use by such person,

the seller may collect the cost of fuel or power to drive the compressor.

(2) *Procedure for collecting the allowance.—(i) Blanket Affidavit.* If a seller has made an effective filing under § 154.94(h) of the Commission's regulations, at least 30 days prior to collecting the allowance, the seller must amend its blanket affidavit under § 154.94(k) and Appendix B. *(ii) Method of payment.* Amounts owned under this paragraph are due in a lump sum payment within 60 days of the submission required under paragraph (f) of this section.

(iii) Retroactivity. Amounts owed under this paragraph may be collected retroactive to July 25, 1980, with interest computed under § 154.102(c)(2)(iii)(A) and (B) of the Commission's regulations.

* * * * *

3. In § 271.1104 a new paragraph (h) is added to read as follows:

§ 271.1104 Production-related costs.

* * * * *

(h) *Pipeline list submissions and protest procedure.—(1) Pipeline filings.* The information is required by §§ 271.1104(h)(2) and (3) of this subpart must be filed with the Commission within [insert date that is 60 days after publication in the **Federal Register**]. If information required under § 271.1104(h)(2) and (3) of this subpart has been submitted in any purchased gas adjustment or rate filing with the Commission, the pipeline may fulfill the requirements of §271.1104(h)(2) and (3) by providing specific references sufficient to locate the data in any of these prior filings.

(2) *Statements of contractual authority.* An interstate pipeline must file the following information for every first seller that sells gas to that pipeline and that asserts contractual authority to collect delivery allowances pursuant to any area rate clause:

(i) A statement specifying for each first seller whether, in the opinion of the interstate pipeline, that particular first seller does have, or alternatively does not have, contractual authority to collect production-related costs permitted under § 271.1104 of the Commission's regulations;

(ii) Any data that supports the statement made under paragraph (h)(2)(i);

(iii) A copy of any data submitted under paragraph (f) of this section for each first seller; and

(iv) The rate schedule number (or if none has been assigned, the date of the contract) and the name of the seller for each first sale of natural gas where the seller has made a submission under paragraph (f) of this section.

(3) *Lists of first sellers.* An interstate pipeline must also file the following information to be published by the Commission in the **Federal Register:**

(i) A list of first sellers (and the respective contracts) that the pipeline has identified under paragraph (h)(2)(i) as having, in the opinion of the pipeline, contractual authority to collect production-related costs permitted under § 271.1104 of the Commission's regulations; and

(ii) A list of first sellers (and the respective contracts) that the pipeline has identified under paragraph (h)(2)(i) ad *not* having, in the opinion of the pipeline, contractual authority to collect production-related costs permitted under § 271.1104 of the Commission's regulations.

(4) *Pipeline third-party and staff protests.* A protest to the delivery allowances claimed on the pipeline submissions filed pursuant to paragraph (h)(2) must be submitted to the Commission, within 60 days of the publication in the **Federal Register** of the pipeline list referencing the contract which governs the filed-for production-related delivery costs to which the protestant objects.

(5) *Contents of protests.* A protest filed under paragraph (h)(4) must:

(i) Specifically identify each contract that is protected;

(ii) Set forth the text of the contractual provisions which the protestant believes to be inconsistent with the conclusion that the contract authorizes the seller to collect the filed-for production-related costs, and the specific reasons why the protestant believes such inconsistency exists; and

(iii) Provide any other evidence which the protestant believes is relevant to the issue of the existence of contractual authorization to collect the production-related costs.

(6) *Protest procedure.* (i) The Commission will publish in the **Federal Register** a notice of a protest filed under paragraph (h)(4).

(ii) The Commission will transmit the pipeline protest filing, the protest filed under paragraph (h)(4) of this section, and the list of first sellers identified as *not* having contractual authority to collect production-related costs, to the Chief Administrative Law Judge.

(iii) Any third-party, staff, or pipeline protest will be set for hearing unless summary disposition is made of the protest.

(iv) Upon receipt by the Commission of any third-party or staff protest, or pipeline protest of first sellers identified as not having contractual authority to collect production-related costs referred to in this section, the seller in the first sale will be joined as a party.

(7) *Authority of Chief Administrative Law Judge.* In the case of any proceeding relating to a third party, staff, or pipeline protest filed under this section, the Chief Administrative Law Judge is authorized to issue such procedural orders, including orders setting matters for hearing, serving and consolidating proceedings and certifying questions to the Commission, as he determines necessary or appropriate for the expeditious consideration of such protests. The Chief Administrative Law Judge may, by such order, authorize the Administrative Law Judge to whom a third-party protest or a pipeline's protest is assigned to issue similar procedural orders relating to that protest.

(8) *Rules of practice and procedure.* Part 385 of the Commission's regulations (relating to rules of practice) will apply to such third party, staff, and pipeline protest proceedings except to the extent otherwise provided by a procedural order issued by the Chief or Presiding Administrative Law Judge under paragraph (h)(7) of this section. Section 385.715 of this chapter will apply to any procedural order issued under paragraph (h)(7) of this section.

[FR Doc. 86-17566 Filed 8-4-86; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 270, 275, 290, 295, and 296

[Notice No. 599]

Implementation of the Consolidated Omnibus Budget Reconciliation Act of 1985; Chewing Tobacco and Snuff

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Proposed rulemaking cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this **Federal Register**, the Bureau of Alcohol, Tobacco and Firearms is issuing temporary regulations regarding the implementation of Subpart B of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272). The temporary regulations also serve as a notice of proposed rulemaking for final regulations.

DATES: The effective date of the temporary regulations is July 1, 1986. Written comments must be delivered or mailed by October 1, 1986.

ADDRESS: Send comments to the Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044, (Attn: Chief, Regulations and Procedures Division).

Disclosure of Comments: Any person may inspect written comments or suggestions during normal business hours at: Office of Public Affairs and Disclosure, Room 4006, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy Cook or Clifford A. Mullen, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Room 6235, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC 20226; (202) 566–7531.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601), it is hereby certified that these proposed regulations if adopted, are not likely to have a significant economic impact on a substantial number of small entities. The revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute.

Executive Order 12291

This document is not a major rule within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have 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.

Paperwork Reduction Act

The requirements to collect information proposed in this document have been submitted to the Office of Management and Budget under Sec. 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35. Comments relating to ATF's compliance with 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503, and to ATF at the address previously specified.

Public Participation

Interested persons may submit written comments and suggestions regarding the temporary regulations. All communications received within the comment period will be considered before final regulations are issued. Any person who desires an opportunity to comment orally at a public hearing on the temporary regulations should submit a written request to the Director within the comment period. However, Director reserves the right to determine whether a public hearing should be held.

The temporary regulations in this issue of the **Federal Register** revised and add new regulations in 27 CFR Parts 270, 275, 290, 295, and 296. For the text of the temporary regulations, see T.D. ATF–232 published in this issue of the **Federal Register.**

Signed: June 23, 1986.

W.T. Drake,

Acting Director.

Approved: July 2, 1986.

Francis A. Keating, II,

Assistant Secretary (Enforcement).

[FR Doc. 86–17439 Filed 8–4–86; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Blue Ridge Parkway, VA and NC; Commercial Hauling and Commercial Vehicle Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking is an administrative change deleting the special regulations pertaining to commercial hauling and the use of commercial vehicles on the Blue Ridge Parkway. Commercial activities are adequately addressed in the general regulations that apply to all units of the National Park System; therefore the special regulations are duplicative and unnecessary. Deletion of these regulations will result in no reduction in the levels of park and visitor protection measures provided.

DATE: Written comments will be accepted through September 4, 1986.

ADDRESS: Comments should be addressed to: Superintendent, Blue Ridge Parkway, 700 Northwestern Plaza, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Gary Everhardt, Superintendent, Blue Ridge Parkway, 700 Northwestern Plaza, Asheville, North Carolina 28801, Telephone: 704–259–0351.

SUPPLEMENTARY INFORMATION:

Background

The special regulations codified in 36 CFR 7.34 (f) and (g) govern commercial hauling activities and the use of commercial vehicles on the Blue Ridge Parkway. Portions of these regulations duplicate provisions of the general regulations codified in 36 CFR 5.6 and are therefore unnecessary. The National Park Service (NPS) has also determined that other provisions of these regulations are no longer necessary or appropriate, being needlessly restrictive of vehicle type, cargo and purpose of travel. Those restrictions that remain necessary can be imposed by the superintendent without a rulemaking by establishing public use limits in accordance with 36 CFR 1.5. The various permits authorized by the special regulations are also authorized by the general regulations codified at 36 CFR 1.5 and 1.6 and are therefore duplicative and proposed for deletion.

Deletion of these regulations will not result in a reduction in the levels of protection afforded visitors or the resources of the Blue Ridge Parkway. The provisions that are important to public safety or resource protection will remain in effect but are either codified in NPS general regulations or will be imposed pursuant to the superintendent's discretionary authority.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking.

Drafting Information

The primary authors of this rulemaking are Art Allen, Assistant Superintendent; Howard Parr, Chief Ranger; and Jim Fox, Park Protection Specialist, all of the Blue Ridge Parkway.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document constitutes an administrative change, not subject to the provisions of Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rulemaking has no economic effect since it neither removes substantive restrictions nor imposes new ones.

The NPS has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause of nuisance to adjacent owners or occupants.

Based in this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. By amending § 7.34 as follows:

§ 7.34 Blue Ridge Parkway.

a. By removing paragraphs (f) and (g).

b. By redesignating paragraph (k) as (d) and paragraph (l) as (e).

Dated: July 28, 1986.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-17593 Filed 8-4-86; 8:45 am]

BILLING CODE 4310-70-M

36 CFR Part 7

Everglades National Park, FL; Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed special regulation set forth below deletes obsolete mining regulations. It further eliminates provisions which restrict some activities and close portions of the park to some uses. Authority to impose restrictions and close areas is adequately provided for in the Services' general regulations. The proposed rule also allows the park to adopt State fishing regulations and to prohibit the possession of any marine life (including lobster species, ornamental tropical fish, or conch species) in the park. This rulemaking will be beneficial in that it will eliminate obsolete regulations, allow consistency with State fishing rules, and ensure protection of park resources.

DATE: Written comments, suggestions, or objections will be accepted until September 4, 1986.

ADDRESS: Comments should be directed to: Superintendent, Everglades National Park, P.O. Box 279, Homestead, FL 33030.

FOR FURTHER INFORMATION CONTACT: Maureen Finnerty, Acting Superintendent, Everglades National Park, P.O. Box 279, Homestead, FL 33030. Telephone (305) 247-6211.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service is proposing to delete obsolete mining rules found in the special regulations for Everglades National Park.

Provisions of the acts of October 10, 1949 (63 Stat. 733), and July 2, 1958 (72 Stat. 280), which will be referred to as "the acts of 1949 and 1958," allowed mineral owners within Everglades National Park to explore for and develop their mineral properties until October 9, 1967. The acts of 1949 and 1958 also provided that if any production of oil or gas occurred during that period the right to explore develop would be extended for all mineral owners for the life of such production. At least four exploratory oil and gas wells were drilled during this period, but no discovery was made and no production occurred. Therefore, the proivision allowing these activities expired on October 9, 1967.

The acts of 1949 and 1958 also provided that former mineral owners were entitled to customary royalties from any production of their former mineral properties should the Federal government so authorize anytime before January 1, 1985. The Federal government made no such authorization.

The National Park Service adopted special regulations found at 36 CFR 7.45(a) ". . . to govern the exploration, development, extraction, and removal of oil, gas, and other minerals on lands acquired for Everglades National Park . . ." The suspense dates authorized by the acts of 1949 and 1958 for former mineral owners to explore or develop their properties or to benefit from any production by the Federal government have passed. Since Everglades National Park is not at risk from such mineral development these regulations are no longer necessary and should be deleted.

The National Park Service is also proposing to modify the section on prohibited conveyances within Everglades National Park. Sections prohibiting the use of glades buggies and amphibious wheeled vehicles have been deleted as unnecessary and duplicative. The Service's general regulation found at 36 CFR 4.19 prohibits the use of all motor vehicles off established roads and parking areas. This provisions provides Everglades with adequate authority to enforce its prohibitions.

Paragraph (c) has been revised to provide clarification to the existing prohibition on the use of vessels or other conveyances with underwater propellers or jets in the water of any grass or marsh area of the park. The existing provision prohibits such use in the "grass area of the glades." This phrase is ambiguous and clarification was determined to be necessary. The park believes this proposed prohibition is necessary to prevent jet scooters and small motor boats from operating in marsh areas. Such operation can be destructive to vegetation and disturbing to wildlife.

The Service is also proposing to revise paragraph (f)(6). This proposed change deletes the existing restriction that cast nets may not exceed 12 feet in diameter. There appears to be no sound ecological or environmental reason to restrict the size of cast nets, and this proposed change would bring this park regulation into conformity with existing State regulation and common fishing practice.

Another proposed revision to paragraph (f) will allow the staff of Everglades National Park to enforce more restrictive State bag limits for saltwater species. The State of Florida's Marine Fisheries Commission asked the National Park Service to propose this regulatory change.

Pursuant to Chapter 80–162, Laws of Florida, a Saltwater Fisheries Study and Advisory Council was appointed by the Governor to recommend to the State Legislature a comprehensive saltwater fishery conservation and management policy. In keeping with this charge, the Council holds public hearings and drafts rules to govern fishing activities within the fisheries of the State of Florida. To date, rules have been promulgated setting seasons, size limits, and bag limits for various species of saltwater gamefish. However, there is a concern among fishermen, the park, and the State over the apparent conflict of bag limits rules set by the Council and those prescribed in the existing Everglades fishing provision in 7.45(f)(17) which states:

(17) Bag limits: No person shall take, have in his possession, buy, offer for sale, sell, or unnecessarily destroy, at any time more than: ten (10) fish of one species, excluding bait fish, as stated in paragraph (f)(6) of this section, and not totalling more than twenty (20) fish of all species, excluding bait fish, with the exception of persons, firms, or corporations holding a valid commercial park fishing permit for mullet and pompano netting only.

Specifically, in the cases of the popular and depleted species such as snook, tarpon, and bonefish, the State of Florida has acted, based on professional fisheries management principles, to restrict possession of these species to two fish per person. Major rules on spotted seatrout and redfish are also under development. The National Park Service does not wish to retain a regulation that conflicts with such State regulatory actions.

Another proposed change is the addition of a prohibition against possession to paragraph (f)(2). The existing regulation prohibits the taking, but *not* the possession, of seahorses, starfish, spiny lobster, ornamental tropical fish, and nonfood fish as defined by the state of Florida. The park believes that to allow for effective enforcement and protection of the resource, possession must be included in this paragraph. This change also makes this provision consistent with 7.45(f)(17) which prohibits the taking or possession of fish in excess of established bag limits.

The remaining proposed changes relate to the deletion of closures and restrictions that are adequately covered under authority of the Service's general regulation found in 36 CFR 1.5, Closures and Public Use Limits. This rule establishes a uniform administrative framework for the exercise of a superintendent's closure and public use control authority. This general regulation accomplishes three objectives: (1) It standardizes, to the greatest degree possible, the circumstances under which a superintendent may apply closures, public use limitations, and visiting hours, area designations, and activity restrictions; (2) it provides for consistent and effective public notification of the imposition of a closure or other restriction or control; and (3) it provides, in appropriate instances, an opportunity for public input into the superintendent's decision-making process. This general regulation makes paragraphs (f)(13) and (g) (1), (2), and (3) of Everglades special regulations unnecessary. They, therefore, are proposed for deletion.

Public Participation

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments suggestions, or objections regarding the proposed special regulations to the address noted at the beginning of this rulemaking.

Drafting Information

The following persons participated in the writing of these regulations: Rick Dawson and Maureen Finnerty, both of Everglades National Park, and Cordell Roy formerly of Big Cypress National Preserve.

Paperwork Reduction Act

The information collection requirements contained in parargraph (g)(2) have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance #1024–0026.

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This conclusion is based on the fact that the deletion of obsolete and duplicative regulations will have no economic effect. The fishing regulation changes would be limited, but probably beneficial to fishing-related industries adjacent to Everglades National Park. Lower bag limits will improve the available stock in park waters.

The Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

Pursuant to the section 7 requirements of the Endangered Species Act, the National Park Service has consulted with the U.S. Fish and Wildlife Service, who has determined that these proposed regulations will have no effect on endangered species.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. Section 7.45 is amended as follows:

§ 7.45 Everglades National Park.

A. By removing and reserving paragraph (a).

B. By revising paragraphs (b) and (c) to read as follows:

* * * * *

(b) The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. This information is being collected to solicit information necessary for the superintendent to issue permits used to grant administrative benefits. The obligation to respond is required to obtain a benefit.

(c) *Prohibited conveyances.* Operating a vessel or other conveyance equipped with an underwater propeller or jet in

the water of any grass or marsh area is prohibited.

* * * * *

C. By revising the introductory text in paragraph (f), paragraph (f)(2) and paragraph (f)(6) to read as follows:

(f) *Fishing.* Except as otherwise provided in this section or in § 2.3 of this chapter, fishing is governed by applicable State law, including State licensing requirements. State bag limits for saltwater species that are more restrictive than those provided in paragraph (f)(16) of this section are hereby adopted and supercede the less restrictive provisions of this section. Violating a provision of State law is prohibited.

(1)* * *

(2) Except for the taking of finfish, bait fish, crabs and oysters as provided in paragraphs (f) and (f)(1) through (f)(16) of this section, the taking, possession or disturbance of any marine life is prohibited.

* * * * *

(6) Live bait (shrimp, minnows, pilchards, pinfish, mullet, mojarras or ballyhoo) may be taken with hook and line, dipnet (not exceeding 3 feet at its widest point) or by cast net, for use as bait.

(i) No live bait may be taken for the purpose of sale.

(ii) A dipnet or cast net may not be dragged or trawled.

* * * * *

D. By removing paragraph (f)(13) and redesignating paragraphs (f)(14) through (f)(17) as paragraphs (f)(13) through (f)(16).

E. By revising paragraph (g) to read as follows:

(g) *Boating.* (1) The following areas are closed to all public entry: Little Madiera Bay, Taylor River, East Creek, Mud Creek, Davis Creek, Joe Bay and its easternmost portion, commonly called Snag Bay, and all creeks inland from the northern shoreline of Long Sound to U.S. Highway 1.

(2) Operating, or remaining at anchor in, a vessel used as living quarters in the waters of the park for more than 14 days, without a permit issued by the superintendent, is prohibited. The superintendent may establish terms of the permit prescribing location of anchorage, length of stay, sanitary requirements and such other conditions necessary to operate or anchor a vessel used as living quarters in the park.

* * * * *

Dated: July 2, 1986.

Susan E. Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-17594 Filed 8-4-86; 8:45 am]

BILLING CODE 4310-70-M

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36 CFR Part 7

Fort Jefferson National Monument, Florida; Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The proposed special regulation set forth below revises the existing decription of Fort Jefferson National Monument to coincide with the new boundary as legislated in Pub. L. 96-287 (1980). Commercial fishing continues to be prohibited and sportfishing has been revised to prohibit the taking of lobster, conch, and ornamental tropical fish. Definitions have been added to clarify terminology. Protection of coral formations within the Monument has been strengthend by the addition of specific language concerning boat operation, anchoring, and limitations on human activity. The proposed rule also eliminates the paragraph concerning designated anchorage, since the authority to regulate this activity is provided for in the Service's general regulations, 36 CFR § 1.5. There are minor revisions to the paragraph regulating aircraft activity. This rulemaking will be beneficial in that it ensures the protection of the resources of the Monument.

DATE: Written comments, suggestions, or objections will be accepted until September 4, 1986.

ADDRESS: Comments should be directed to: Superintendent, Everglades National Park, P.O. Box 279, Homestead, FL 33030.

FOR FURTHER INFORMATION CONTACT: Maureen Finnerty, Acting Superintendent, Everglades National Park, P.O. Box 279, Homestead, FL 33030. Telephone (305) 247-6211.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service is proposing in paragraph (a) to revise the existing description of the boundary for Fort Jefferson National Monument. In the enabling Presidential Proclamation (No. 2112, 1935), the Monument's boundary was depicted as an ellipse on the diagram accompanying the legislation. This made accurate marking and enforcement of the boundary impossible, since no straight lines existed for Monument personnel or visitors to sight along. In 1960, an administrative boundary was established inside of the elliptical boundary, using longitude-latitude coordinates as 'corners'. This administrative boundary was established as part of the Monument's special regulations. In 1980, Pub. L. 96-287 redescribed the authorized boundary, using nine sets of coordinates as 'corners'. This eliminated any distinction between an authorized and an administrative boundary and resulted in a nine-sided boundary which closely follows the original ellipse authorized in 1935. This rule revision proposes to revise the special regulations so that the Monument boundary is described in accordance with the 1980 Public Law.

The proposed rule deletes existing paragraph (b), which sets forth anchoring and mooring restrictions. Since the Service now has the authority to regulate this type of activity through 36 CFR 1.5, it is no longer necessary that they be retained as special regulations. The general regulation found in 36 CFR 1.5, standardizes the circumstances under which a superintendent may apply closures, public use limitations, visiting hours, area designations, and activity restrictions.

Paragraph (b) is proposed as "Definitions". It defines terminology used elsewhere in § 7.27. Common fish names such as "minnow" and "pinfish" are clarified with scientific names.

Paragraph (c) contains fishing regulations. The reference to protection of sea turtles has been deleted, since it duplicates the protection already provided by the general regulations found in 36 CFR 2.1, and by the Endangered Species Act. The general regulation provide protection to all natural features of a national park system area and the Endangered Species Act gives strong protection to specific, 'listed' species. All of the turtle species known to frequent Monument waters are listed as either endangered or threatened.

The restriction against fishing within 500 feet of the moat wall is proposed for relaxation to allow fishing within 100 feet of the moat wall.

This will be easier to enforce as park rangers will be better able to talk to people and advise them of the restriction. The intent of this proposed paragraph is to keep individuals from fishing from the moat wall and to standardize the distance. Previously restrictions on fishing varied from 200 to 500 feet from the moat wall.

The Service is proposing to delete the existing restriction that cast nets may not exceed 12 feet in diameter. There appears to be no sound ecological or environmental reason to restrict the size of cast nets, and this proposed change would bring this park regulation into conformity with existing State regulation and common fishing practice.

Commercial fishing remains prohibited but all provisions related to sportfishing for lobster or conch have been deleted. In 1976, a moratorium on the taking of lobster became effective via the superintendent's authority to regulate public use (36 CFR 1.5, formerly 36 CFR 2.6). This moratorium was based on data collected by National Park Service biologists in a 1975 study which indicated that legal harvesting was removing almost 90% of the lobster within the Monument. The Gulf of Mexico Fisheries Management Council concurred with this finding and recommended that the Monument be established as a sanctuary for lobster.

In 1975, the entire Dry Tortugas conch population was decimated by a natural disaster, possibly red tide. A superintendent' moratorium was instituted and by 1979 the conch population had recovered. The moratorium has remained in effect since then and in 1985, the State of Florida effected a statewide prohibition on the taking of conch. The intent of the Service is to conform with state fishing regulations whenever they do not conflict with the mission and purpose of a National Park System area. In this case, the statewide conch prohibition reenforces the moratorium on taking conch within the Monument which was accomplished through the authority of the superintendent to regulate public use.

Based on the above discussions, the Service wishes to continue to protect lobster and conch. The moratoriums on both species are contained in the Monument's compendium, a document which cites those actions undertaken by the superintendent to regulate public use. However, the special regulations for the Monument have not been recently revised and thus do not reflect the prohibitions on taking conch or lobster. The Service proposes to update these special regulations to contain the prohibitions on taking conch or lobster within the Monument.

This is also in accord with the intent of Congress, as recently expressed in Pub. L. 96-287 (1980), which broadened the scope of the Mounment's purpose from one of primarily protecting the historical structure of Fort Jefferson to also include protection of the natural features:

"The Congress recognizes the need for . . . protecting and interpreting a pristine natural environment including the entire Dry Tortugas group of islands and their associated marine environments, significant coral formations, fish and other animal populations, and populations of nesting and migratory birds, all of which are located within Fort Jefferson National Monument."

This congressional recognition of the Monument as an important natural area and the need to protect "a pristine natrual environment" has resulted in the Service's proposal to add specific provisions for the protection of ornamental tropical fishes in paragraph (c) and for the "significant coral formations," as proposed in paragraph (d), "Coral Protection." The intent of the Service is to provide the most protective environment possible for fragile coral formations. Although protected in a general sense under 36 CFR 2.1, that regulation is not specific enough to provide definitive protection of coral. Many other natural features (rocks, plants) are not harmed by handling or touching. Coral, however, can be destroyed by these activities; thus the Service finds it is necessary to specifically prohibit them.

Coral damage caused by vessels, anchors, or other mooring devices has in the past been attributed to the unintentional carelessness of vessel operators. The coral formations at Fort Jefferson National Monument are internationally recognized as unique and pristine environs. This fact was supported by the significant expansion of Congressional intent in 1980 concerning the Monument's purpose. Therefore, it is no longer acceptable to ignore the fact that such damage can and does occur. This proposal seeks to place full responsibility for preventing coral damage by vessels or anchoring methods with the vessel operator.

The above explanation may also be applied to the Service's proposal to prohibit persons from "handling, standing on or otherwise disturbing coral in the water." Significant damage to coral can be caused by divers or snorkellers standing on coral heads or handling coral. The Service proposes to mitigate this damage by prohibiting these acts. Each person shall be responsible for insuring that no contact with coral occurs with his/her body or equipment, such as fins, SCUBA tanks, or cameras.

The proposed regulations to protect coral formations are similar to special regulations at two other National Park Service areas: Buck Island Reef National Monument (36 CFR 7.73) and Virgin Islands National park (36 CFR 7.74); and two national marine sanctuaries in the Florida Keys: Key Largo National Marine Sanctuary (15 CFR Part 929) and Looe Key National Marine Sanctuary (15 CFR Part 937).

Minor revisions are proposed in paragraph (3) for aircraft regulation [formerly paragraph (c)]. The Service's general regulations, 36 CFR 2.17 prohibit aircraft from taxiing within 500 feet of swimming beaches, boat docks or piers. Aside from the swimming area beach, the only other beach suitable for aircraft use on Garden Key is just north of the dock, and is less than 500 feet from the dock. In order to allow continued use of this beach by air taxi operators and 'flightseeing' passengers, the Service proposes to continue to allow a relaxation of the restriction provided in the general regulation by stating that seaplanes may taxi closer than 500 feet to the Garden Key dock.

Another minor proposed revision concerns the provision in the existing paragraph (c) " . . . but approaches, landings and takeoffs shall not be made within 300 yards of Bush Key." The following phrase is proposed for addition, to read" . . . but an approach, landing, or takeoff may not be made within 300 yards of Bush Key, when Bush Ky is closed for wildlife nesting under authority of §1.5 of this chapter." The Service proposes this revision to allow aircraft use closer than 300 yards to Bush Key when there is no reason to prohibit such activity. The prohibition will continue in effect when Bush Key is closed to protect wildlife nesting—but will be lifted at all other times.

Public Participation

The Policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed special regulation to the address noted at the beginning of this rulemaking.

Drafting Information

The following persons participated in the writing of these regulations. Maureen Finnerty and Lorrie Sprague of Everglades National Park, and Dick Newgren and Tom Rutledge of Fort Jefferson National Monument.

Paperwork Reduction Act

This rule contains no information requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This conclusion is based on the fact that the proposed regulations are restatements, clarifications, and definitions of previously established policies and regulations resulting in no change or effects on the economy. A slight enlargement of about four acres of the area available for sport fishing would have virtually had no economic impact. The proposed restrictions on anchoring on or damaging coral will actually have a beneficial effect on tourism to the Fort. Many visitors enjoy snorkeling and diving over the coral reefs.

The Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

Pursuant to the section 7 requirements of the Endangered Species Act, the National Park Service has consulted with the U.S. Fish and Wildlife Service, who has determined that these proposed regulations will have a beneficial effect on endangered species.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for 36 CFR Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. Section 7.27 is revised as follows:

§ 7.27 Fort Jefferson National Monument.

(a) *Boundary.* Fort Jefferson National Monument consists of an area enclosed by connecting with straight lines the adjacent points of latitude and longitude as listed below:

Buoy	Latitude North	Longitude West
A	24°34'00"	82°54'00"
C	24°34'00"	82°58'00"
E	24°39'00"	82°58'00"
H	24°43'00"	82°54'00"
I	24°43'30"	82°52'00"
K	24°43'30"	82°48'00"
L	24°42'00"	82°46'00"
M	24°40'00"	82°46'00"
O	24°37'00"	82°48'00"

(b) *Definitions.*

Ballyhoo means a member of the genus Hemiramphus, (family: EXOCOETIDAE).

Cast net means a type of circular falling net, weighted on its periphery, which is thrown and retrieved by hand.

Commercial fishing means the taking of products of the sea for sale or barter.

Conch means a member of the genus Strombus.

Dipnet means a device for obtaining bait, the netting of which is fastened in a frame.

Finfish means a member of the subclasses AGNATHA, CHONDRICHTHYES, or OSTEICHTHYES.

Lobster means a member of the genus Panulirus.

Minnow means a member of the family CYPRINODONTIDAE, POECILIIDAE, or ATHERINIDAE.

Mojarra or *goats* means a member of the family GERREIDAE.

Mullet means a member of the family MUGILIDAE.

Ornamental tropical fish means finfish not commonly used for food or bait, belonging to the families SYNGATHIDAE, APOGONIDAE, POMACENTRIDAE, SCARIDAE, BLENNIDAE, CALLIONYMIDAE, GOBIIDAE, OSTRACIIDAE, and DIODONTIDAE.

Pilchard means a member of the herring family, CLUPEIDAE.

Pinfish means a member of the genus Lagodon, (family: SPARIDAE).

Sportfishing means the taking of fish for recreation or personal consumption.

(c) *Fishing.* (1) Commercial fishing is prohibited.

(2) All waters are open to sportfishing with hook and line, except for the following waters of Garden Key which are closed to fishing: The waters of the moat, the waters within 100 feet of the moat wall, and the waters within the swimming and snorkelling area designated by buoys.

(3) The taking of live bait is prohibited, except that minnows, pilchards, pinfish, mullet, mojarras (goats), or ballyhoo may be taken for use for sportfishing with hook and line, dipnet (not exceeding 3 feet at its widest point), or by cast net. No live bait may be taken for the purpose of sale. A dipnet or cast net may not be dragged or trawled.

(4) The use of a spear, gig, or net is prohibited, except for nets as provided in paragraph (c)(3) of this section.

(5) Except for the taking of finfish and bait fish as provided in paragraphs (c)(2) and (3) of this section, and § 2.3 of this chapter, and the taking of unoccupied seashells in accordance with the provisions of § 2.1 of this chapter, the taking or disturbance of any marine life (including ornamental tropical fish, lobster, or conch) is prohibited.

(d) *Coral protection.* (1) No vessel may be operated in a manner, nor may an anchor, chain, line, or any other mooring device be cast, dragged, or placed, so as to strike or otherwise cause damage to any underwater feature, including a coral formation. The operator of a vessel is responsible for any such damage.

(2) Handling, standing on, or otherwise disturbing coral in the water is prohibited.

(e) *Aircraft.* Aircraft may be landed in the waters within a radius of 1 nautical mile of the Fort situated at Garden Key, but an approach, landing, or takeoff may not be made within 300 yards of Bush Key when Bush Key is closed for wildlife nesting under authority of § 1.5 of this chapter. Seaplanes may be moored or brought up on land only on the designated beach north of the Garden Key dock. Helicopters may be landed only at the designated helipad on the Garden Key coaling dock. The operation of aircraft is further restricted by § 2.17 of this chapter, except that seaplanes may be taxied closer than 500 feet to the Garden Key dock while enroute to or from the beach north of the dock.

Dated: July 7, 1986.

Susan E. Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-17595 Filed 8-4-86; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[A-3-FRL-30601]

State and Federal Administrative Orders Permitting a Delay in Compliance with State Implementation Plan Requirements; Pennsylvania Department of Environmental Resources

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rulemaking; invitation for public comment.

SUMMARY: EPA has proposed to approve an Administrative Order issued by the Pennsylvania Department of Environmental Resources to Reneer Films Corporation. The Order requires the company to bring air emissions from its graphic arts facility located in West Brunswick Township, Schuylkill County, Pennsylvania into compliance with certain regulations contained in the federally approved Pennsylvania State Implementation Plan (SIP) for the control of ozone. The Order requires that compliance be achieved by December 31, 1986 utilizing low solvent technology (LST) or should LST be abandoned the installation of add-on controls. Because the Order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a Delayed Compliance Order pursuant to the Clean Air Act (the Act). If approved by EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the Federal enforcement provisions of section 113 of the Act or citizen suit provisions under section 304 of the Act for violation of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before September 4, 1986.

ADDRESSES: Comments should be submitted to Director, Air Management Division, EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at the EPA Region III address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Jack W. Reynolds P.E., Environmental Scientist, Enforcement Policy and State Coordination Section, Air Management Division U.S. EPA Region III, 841 Chestnut Building Philadelphia, Pennsylvania 19107 Telephone: (215) 597-9100

SUPPLEMENTARY INFORMATION: Reneer Films Corporation operates a graphic arts facility in West Brunswick Township, Schulykill County, Pennsylvania. The Order under consideration addresses emissions from the rotogravure graphic arts printing operations, which are subject to section 129.67, Title 25 of the Pennsylvania Code. The regulations limit the emissions of volatile organic compounds (VOC), and are part of the federally approved Pennsylvania State Implementation Plan for the control of ozone. The Order requires final compliance with the regulation by December 31, 1986 through the use of low solvent technology (LST) or should LST be abandoned the installation of add-on controls.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a Delayed Compliance Order under Section 113(d) of the Clean Air Act (the Act). EPA has reviewed the Order and has found that the Order does satisfy the requirements of this subsection of the Act.

EPA's review indicates that the graphic arts facility is a major source of VOC emissions. The facility is located in Northeast Pennsylvania-Upper Delaware Valley Interstate (New Jersey-Pennsylvania) Air Quality Control Region, a nonattainment area for the National Ambient Air Quality Standard for ozone.

The facility as presently constructed is unable to comply with regulations limiting emissions of VOC's codified at section 129.67, Title 25 of the Pennsylvania Code, part of the federally-approved State Implementation Plan, because low solvent coatings are still being developed. Prior to issuance of the Order, Pennsylvania provided an opportunity for public comment and hearing on the Order. No public comments or requests for public hearing were received by the State. The Order contains requirements for expeditious increments of progress towards compliance and emission monitoring and reporting as required by section 113(d)(6) of the Clean Air Act. These requirements are sufficient to avoid any imminent and substantial endangerment to health within the meaning of section 113(d)(7)(a) of the Clean Air Act. The first increment of progress, which requires progress reports concerning low solvent coatings research and development has been completed. The 1984 estimated VOC emissions of 574.3 Tons/Year (T/Y) will be reduced 373.3 T/Y to 201 T/Y by December 1986 if either low solvent coatings are chosen or if emission control equipment is installed. The system of emissions reduction required during the period covered by this Order is the best practicable system in light of the ultimate emission reductions required for compliance with the SIP.

In accordance with the increments of progress designated in this Order the Company has chosen to demonstrate compliance by installing emission control equipment. A Plan Approval application for control equipment was submitted prior to January 31, 1986 according to schedule and approval was granted by PADER. Thus the Company is required to implement the remaining actions of this Order according to the established schedule.

The Order requires the facility to comply with the State Implementation Plan whenever it is temporarily able to do so and the Order, therefore, meets the requirements of section 113(d)(7)(B). The Order notifies Reneer Films Corporation of its liability for noncompliance penalties under section 120 of the Clean Air Act, 42 U.S.C. 7420 as required by section 113(d)(1)(E) of the Act.

If approved, the Order would also constitute an addition to the Pennsylvania SIP. However, source compliance with the Order will not preclude assessment of any penalties under section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2)(B) or (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments receive by the date specified above will be considered in determining whether EPA may approve the Order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

The Office of Management and Budget has exempted this rule from the

requirements of Section 3 of the Executive Order 12291.

List of Subjects in 40 CFR Part 65

Air pollution control.

Authority: 42 U.S.C. 7413, 7601.

Dated: July 24, 1986.

James M. Seif,

Regional Administrator, Region III.

[FR Doc. 86-17560 Filed 8-4-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 85

[FRL-2974-4]

Sale and Use of Aftermarket Catalytic Converters

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed enforcement policy.

SUMMARY: This action announces a proposed enforcement policy regarding the sale and use of replacement catalytic converters ("converters") for motor vehicles. The installation, sale or manufacture of a converter which is ineffective or less effective than the new original equipment (OE) converter could constitute tampering or causing tampering under section 203(a)(3) of the Clean Air Act. Although permitting only new OE converters to be used as replacements would ensure full effectiveness, these parts are generally quite expensive and some State and local vehicle Inspection/Maintenance (I/M) program officials are reluctant to require converter replacement for missing or damaged converters because of this expense. The proposed enforcement policy is intended to encourage the development of inexpensive, multiple-application converters, and to ensure the effectiveness of these products, by allowing their use as replacement converters in certain circumstances provided they meet specified criteria.

DATES: Comments or requests for public hearing must be received on or before November 3, 1986.

ADDRESS: All comments and information should be submitted to Public Docket No. A-84-31, located at the Environmental Protection Agency, Central Docket Section, West Tower Lobby, Galley I, LE-131, 401 M Street, SW., Wasington, DC 20460. The docket may be inspected weekdays between 8:00 a.m. and 4:00 p.m. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Janet Murphy or Steve Albrink (202) 382-2640, Field Operation and Support Division (EN-397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Most light-duty motor vehicles built since 1975 have been certified to meet Federal or California emission standards with catalytic converters ("converters"). The converter is the major emission control device used by vehicle manufacturers on light-duty vehicles primarily to reduce hydrocarbons and carbon monoxide emissions. Three-way converters, which have been used widely since 1981, also help control oxides or nitrogen emissions. If a vehicle is property maintained and not operated on leaded gasoline, the converter should not require replacement for the entire life of the vehicle. However, improper maintenance, converter removal, accidents or the repeated use of leaded fuel can damage or destroy the effectiveness of the converter so that the vehicle is unsafe, noisy, or cannot comply with emissions standards or local inspection requirements, thus necessitating the installation of a replacement converter.

On November 25, 1980, EPA published regulations regarding the voluntary certification of aftermarket parts pursuant to section 207(a)(2) of the Clean Air Act (*see* 40 CFR Part 85, Subpart V). These regulations contain testing procedures for certifying oxidizing catalytic converters and essentially were designed to require certified aftermarket converters to be as good as or better than the OE converters they are to replace. (To this date, no one has certified converters under the program.) The purpose of these regulations is to protect vehicle owners' emissions performance warranty rights under section 207(b)(2) of the Act [1] if they use such "certified" parts, and to protect service and repair facility operators installing "certified" parts from liability for "tampering" violations under section 203(a)(3) of the Clean Air Act.

The proper use of a converter certified to meet the voluntary aftermarket parts certification regulations will protect the vehicle owner's emissions performance warranty rights and can be installed anytime without subjecting the installer to liability for violating section 203(a)(3).

On December 5, 1984 EPA issued a notice announcing public workshops to explore the possibility of establishing alternative testing procedures or aftermarket converters and requesting information and comments on the subject. 49 FR 47550 (1984). That notice stated that the workshops might result in the amendment of the voluntary aftermarket parts certification regulations. The notice also included draft converter test procedures and criteria to help initiate the discussion of topics. Workships were subsequently held in January 1985 to discuss the relevant issues. Written comments were invited for a period of 30 days after the last workshop.

After reviewing the information received, EPA decided against amending the regulations with regard to the test procedures and acceptance criteria for catalytic converters to be "certified" under section 207(a)(2).[2] However, as discussed below, EPA has developed a proposed enforcement policy (guidelines) on how it will enforce section 203(a)(3) with regard to the installation of aftermarket converters. Although the proposed enforcement guidelines merely reflect EPA intended exercise of its enforcement discretion and are not regulations, EPA proposes to add those guidelines to 40 CFR Part 85 of Appendix IX, for the convenience of any persons who may choose to follow the guidelines.

In addition, as discussed elsewhere in today's **Federal Register**, the proposed guidelines described here will be, from the date of publication of this notice, the interim policy of EPA with regard to the enforcement of the tampering prohibition against sellers, installers, and manufacturers of aftermarket catalytic converters. Although the final policy may be issued with substantial modifications, or not at all, depending on the comments received, no installer, seller, or manufacturer voluntarily complying with the interim guidelines will be prosecuted for tampering as a result of following the guidelines during the interim period before the final policy is published or this proposal is withdrawn. However, the installation or sale of a converter not complying with the interim guidelines, and which is not a new OE converter or its equivalent (as defined in the proposed policy) or a

[1] Under Section 207(b)(2), if a vehicle has been properly maintained and used, yet fails at any time during its useful life to conform to applicable emission standards (e.g., by failing an eligible state or local emissions test), and thus causes the owner to bear some sanction, the vehicle manufacturer is required to correct the failure at its expense.

[2] EPA is, however, preparing another proposal to amend certain aspects of the aftermarket parts certification regulation in accordance with a court order in *Specialty Equipment Manufacturers Association* v. *Ruckelshaus*, 720 F.2d 124 (D.C. Cir. 1983). The provisions subject to that proposal are not at issue here.

"certified" converter, may be considered tampering or the causing thereof.

Section 203(a)(3) of the Clean Air Act, 42 U.S.C. 7522(a)(3), prohibits parties named in the statute from tampering with emission control systems on motor vehicles and prohibits any person from causing tampering. Specifically, section 203(a)(3) prohibits vehicle manufacturers, dealerships, service and repair facilities and fleet operators from removing or rendering inoperative any emission control device or element of design installed on or in a motor vehicle. In addition, section 203(a) prohibits any person from causing such tampering. Tampering with emission controls can include removing, disabling or destroying a part of the emission control system, or installing an incorrect or ineffective part in or on any motor vehicle designed to meet Federal or California emissions standards. The installation of a new OE converter identical to that with which the vehicle was originally manufactured would not be a violation of the Act.

Many urban areas have air pollution problems caused primarily by motor vehicles. The majority of these areas have been or will be implementing vehicle inspection or testing programs. EPA's 1984 Tampering survey revealed that 16% of all vehicles have had their converters removed or have used leaded gasoline, which in effect ruined the converters' ability to lower emissions. Many of these vehicles are now or soon will be subject to inspection or testing programs.

EPA is actively promoting state and local tampering inspection programs which would require converter replacement where missing or lead-poisoned converters are discovered. There is no question that effective converters in place of lead-poisoned or missing converters would directly improve compliance with emission standards and benefit air quality. However, the Agency believes that some inspection officials have been or will be extremely reluctant to require converter replacement because OE (or equivalent) converters are relatively quite expensive (e.g., between $300 and $500 installed). Thus, EPA has decided that its success in persuading State and local governments to implement such programs depends, in part, on the availability and cost of replacement converters. EPA is also concerned that replacement converters used in any such program be of sufficient quality to provide vehicles with a reasonable opportunity to comply with applicable standards and to provide as much air quality benefit as reasonably possible.

It has been suggested that the major reason that new OE converters cost so much is that they are engineered and designed only for specific applications. If aftermarket converters could be consolidated into a limited number of multiple-application converters, then the costs to the consumer could be reduced considerably. Thus, the proposed enforcement policy is intended to foster the development and allow the use of less expensive, multiple-application replacement converters.

The proposed performance criteria are based on EPA data on the performance of properly maintained OE converters with less than 50,000 miles of use. The criteria for new aftermarket converters require such converters to perform effectively for up to 25,000 miles of use, as demonstrated by testing on worst case vehicles, so that the emissions reduction benefits for the average vehicle and the total fleet that receive them would be greater than the criteria might indicate. While the proposed policy specifies that prototype converter aging is to be by vehicle mileage accumulation, it also allows for accelerated aging if it can be demonstrated that the procedures are as stringent as vehicle mileage accumulation. The Agency is working with the industry to develop such an aging alternative which could be available for the final policy.

The performance criteria for used aftermarket converters are designed to screen out the used OE converters which have obviously been extensively fuel switched or whose performance has been severely affected by prior use. As a result, each used converter must be tested by a bench test procedure under the proposed criteria.

EPA recognizes that converters which meet the proposed criteria of these guidelines may not perform at the same level over as extended a period as the new converters installed by the vehicle manufacturer and that their use therefore may not completely protect the vehicle owner's emissions warranty rights under section 207 of the Act.[3] In such cases, EPA believes that the substantial emissions control provided by converters meeting the criteria of this policy would be a great improvement compared to the lack of control caused by missing or poisoned converters. Thus, the primary purpose of the proposed policy is to support state and local antitampering inspection programs by encouraging them to require converter replacement where the converter is missing, lead poisoned, or otherwise ineffective.

EPA does not intend to permit the use of aftermarket converters meeting the criteria discussed below to restore the emission control capabilities of vehicles originally equipped with converters and operated outside the U.S., Canada or Mexico and subsequently brought back to the U.S. pursuant to 40 CFR 85.1509, or to replace properly operating OE converters, or as replacement converters for warranty or recall purposes. Since properly maintained converters normally would not require replacement for the life of the vehicle, such uses will be considered violations of section 203(a)(3) of the Act.

EPA also recognizes that in some limited circumstances the original converters may fail or be damaged and require replacement for reasons other than misfueling or converter removal. Under these circumstances, if the vehicle is less than 5 years old, has accumulated less than 50,000 miles, and a state or local inspection program has not determined that the existing converter needs replacement, the vehicle's expected remaining useful life may be significant and should require replacement with a new OE or equivalent converter. Moreover, the 5 year/50,000 mile emissions warranty presumably would be applicable to those vehicles. For vehicles over 5 years old or with more than 50,000 miles, on the other hand, it may be appropriate to allow the use of aftermarket converters meeting the criteria of these guidelines if there is a legitimate need for replacement, even though not due to removal or poisoning of the converter, and even if the state or local inspection program has not ordered replacement.

Thus, this proposed and interim policy only applies to converters that meet the criteria described in the attached guidelines and that are used as replacement converters: (1) On a vehicle which is missing a converter; or (2) pursuant to a determination by a State or local inspection program that the existing converter has been lead-poisoned or damaged or otherwise needs replacement; or (3) for vehicles over 5 years or 50,000 miles old where a

[3] Under section 207(b)(2)(A) of the Act, an owner who has removed or poisoned his original converter by misfueling probably has already voided the manufacturer's performance warranty for the catalyst itself by failing to properly maintain the vehicle. Of course, if an owner wishes to preserve whatever performance warranty rights remain with regard to emission-related parts affected by converter performance, the owner could elect to replace the converter with an OE or certified converter. Under the 207(a) warranty, if the use of anything but an OE or equivalent or certified converter has caused the malfunction of any other emission part or emission-related part, that part should not be considered "defective" and may not be covered under that warranty.

legitimate need for replacement has been established and documented. All other converter replacements by regulated parties are potentially subject to enforcement actions under section 203(a)(3) and, thus, the replacement converters must be OE or equivalent or certified converters. In order to prevent converters meeting the criteria in this proposal from being improperly used to replace properly operating converters, EPA will be monitoring their use. If it becomes apparent that abuses are occurring, EPA may change the final policy, or eliminate the policy entirely, so that the use of such converters by named parties may be considered a violation of section 203(a)(3) under any circumstances.

The proposed policy is intended to supersede EPA's Mobile Source Enforcement Memorandum 1A only with regard to new or used aftermarket converters.

Additional Information

Under Executive Order 12291, EPA must judge whether an action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This action is not major because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestics or export markets. In fact, the proposed policy will allow additional businesses to enter the converter replacement market to produce, market, or install acceptable quality replacement converters. It will also lower costs to consumers and increase competition since vehicle manufacturer's dealerships will no longer be the only suppliers of acceptable converters.

This action was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291. Any comments from OMB and any EPA response to such comments are available for public inspection in the docket.

Finally, the proposed policy will impose reporting and recordkeeping requirements for those companies which voluntary enter this market. Information collection requirements affected by the notice have been submitted to OMB for review under the provisions of the Paperwork Reduction Act. Any written comments from OMB or response from EPA will be included in the docket.

List of Subjects in 40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

EPA proposes to amend the table of contents to 40 CFR Part 85 by adding a reference to Appendix IX, entitled Enforcement Policy For Sale and Use of Aftermarket Catalytic Converters.

Dated: July 25, 1986.

Don R. Clay,

Assistant Administrator.

PART 85—[AMENDED]

1. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7522(a)(3).

2. EPA proposes to amend 40 CFR Part 85 by adding a new Appendix IX, to read as follows:

Appendix IX—Enforcement Policy for Sale and Use of Aftermarket Catalytic Converters

A. General Requirements

Regulated parties shall install new or used aftermarket catalytic converters ("converters") on motor vehicles only if the converters are represented in writing by the distributor or manufacturer to have been tested according to the following procedures and to have met the performance criteria specified below, or are certified (under 40 CFR Part 85, subpart V) or are new or equivalent to new original equipment (OE) converters. "Regulated parties" means any person engaged in the business of repairing, servicing, selling, leasing or trading motor vehicles or motor vehicle engines, or who operates a fleet of motor vehicles. "Equivalent" means identical or better in all emission related respects as determined by the U.S. Environmental Protection Agency (EPA).

New or used aftermarket converters that meet the performance criteria specified herein may be installed in the following situations: (1) If the vehicle is missing a converter; (2) if a state or local inspection program has determined the existing converter has been lead-poisoned or damaged or otherwise needs replacement; or, (3) if the vehicle is more than five (5) years old or has more than 50,000 miles and a legitimate need for replacement has been established and documented. The third situation normally would include only plugged converters or those damaged to the point where unrepairable exhaust leaks are present. Any other converter replacement must be with a certified or new OE or equivalent converter or it will be considered tampering.

In order to establish and document that the circumstances permitting replacement of an original or missing converter with an aftermarket converter meeting the required performance criteria exist, the installer must include the customer's name, complete address, and the make, model year and mileage of the vehicle on the service invoice along with a stated reason for replacement. Where a state or local government has determined that a converter is damaged or needs replacement, the service or repair facility also must retain a copy of the written statement or order by a proper government representative which indicates that the converter should be replaced and attach it to the invoice. Where the replacement need has not been verified by a proper state or local government representative, the customer and a representative of the service or repair facility must sign a statement verifying that replacement is justified. This statement, which may be contained on the invoice or separately, shall consist of the following:

Catalytic converters are emission control devices which are designed to last the life of the vehicle and do not normally require replacement. Furthermore, if the vehicle is properly use and maintained, original converters are covered by the emissions control warranty for 5 years or 50,000 miles. Federal law prohibits repair businesses from replacing these devices except under certain limited circumstances.

In order to verify that the proper circumstances exist, the owner of the vehicle on which such repairs are made and a facility representative must sign the following statement.

—The vehicle is over 5 years old or has more than 50,000 miles on it and the catalytic converter required replacement because————.

OR

—The vehicle's catalytic converter was missing when the vehicle was brought in.

Vehicle Owner's Signature

Facility Representative's Signature

Installers must retain copies of the invoices and statements for six (6) months, and the replaced converters (if any) for at least 15 days from the date of installation of the replacement converters. Replaced converters must be marked in such a way that they can be identified with particular customer invoices and statements and be available for EPA inspection.

All other converter replacements or installations, such as on vehicles imported without converters pursuant to 40 CFR 85.1509, or on vehicles covered under warranty or being recalled also must be with new OE or equivalent or "certified" converters. Persons who install or sell aftermarket converters that do not meet the criteria and conditions specified in these guidelines may be considered liable for tampering or causing tampering.

These guidelines shall be effective for all aftermarket converters manufactured or recycled after [insert 90 days from publication] and apply to converters which meet the definitions of and criteria for new or used aftermarket converters as stated below.

B. Test Procedures and Performance Criteria

1. New Aftermarket Converters

A new aftermarket converter is defined for purposes of these guidelines to be a converter

which has: (1) All new materials; or, (2) any new materials which make the converter not equivalent to an OE converter; or, (3) any construction which makes the converter not equivalent to an OE converter. New converters require limited vehicle durability testing by the converter manufacturer on worst case vehicles in each application category and the converters must meet the exhaust emission control efficiency requirements listed below. The converter manufacturer must demonstrate that the converters meet applicable performance standards as described below after 25,000 miles, which is considered half their useful lives.

(a) Two vehicles in each application category are normally required to conduct the mileage accumulation and testing. The application category is to be defined by the converter manufacturer. Application category can refer to the types of vehicles and/or engines the converters are to be installed on, or the types of OE converters the aftermarket converters are to replace. In addition, the converters must be identified as one of the following: (1) Oxidation converter, (2) three-way converter; or (3) three-way-plus-oxidation converter.

(b) The vehicles for which the converter is an appropriate installation are to be defined by the converter manaufacturer. The converter manufacturers must supply this information with each converter so that the installer can easily and clearly know the vehicle application(s).

(c) The worst case vehicles in each application category are required to be tested by the converter manufacturer. Absent any information supplied by the converter manufacturer, the worst case for each application category will be the highest test weight/largest engine displacement within the application caterogy. This combination is determined by selecting the largest engine displacement within the highest test weight class. Test weight is described in 40 CFR 86.129–80. Information on test vehicle/engine selection is available from EPA's certification summary data.

(d) Durability mileage accumulation shall be conducted on at least two test converters for 25,000 miles each, using the mileage cycle in Appendix IV of 40 CFR part 86 for track mileage accumulation or one that is typical of in-use operation and equal to that cycle for road mileage accumulation. Commercially available unleaded fuel and oils of the grade and quality specified by the manufacturers in the owner's manual shall be used. The vehicles shall be set to manufacturer's specifications, equipped with the test converters for the entire mileage accumulation and records of all vehicle and engine maintenance shall be kept. No maintenance of the converters is permitted. Different vehicles may be used for mileage accumulation and testing if they are equal with respect to emission related parameters (i.e., "slave" vehicle(s) may be used for testing).

(e) As an alternative to vehicle mileage accumulation, accelerated bench testing which simulates the 25,000 miles accumulation may be used if it can be demonstrated to EPA in advance that the procedures are at least as stringent as vehicle mileage accumulation.

(f) At the end of the mileage accumulation, two cold start Federal Test Procedures ("FTP") tests (including the heat-build portion of the evaporative test) described in 40 CFR part 86 shall be performed on each vehicle. The pair of test results will be considered consistent if they are within 10% for HC and CO and 15% for NO_x. If the results are consistent, the results shall be averaged to obtain the with-converter (w/c) emissions. If the pair are not consistent *i.e.*, not within 10% for HC and CO and 15% for NO_x, a third test may be run. The results of the third test may be averaged with either of the first two tests if the resulting pair is consistent, *i.e.*, within 10% for HC and CO and 15% for NO_x. If the third test does not result in a consistent pair, then the design will not be acceptable unless the manufacturer can demonstrate to EPA's satisfaction that the first three tests were not repeatable due to non-converter problems (e.g., test equipment, etc.) and that there is repeatability on subsequent tests.

(g) If the w/c tests produce a consistent pair, the aftermarket converter shall then be removed and replaced with an exhaust pipe which adequately simulates the exhaust backpressure characteristics of the converter. No other maintenance or modification to the vehicles is permitted between with- and without-converter configurations. Two more cold start FTP tests shall be run on each vehicle with converter removed. The results shall be averaged (if they meet the above consistency requirements) to obtain the without-converter (wo/c) baseline values.

(h) The converter efficiency shall be determined using the following formula:

$$\text{efficiency} = \frac{100\ (\text{emissions (wo/c)} - \text{emisison (w/c)})}{\text{emissions (wo-c)}}$$

In order to be an acceptable converter, the converter efficiency determined above must be greater than or equal to the values shown in the following table for each of the two converters.

TABLE 1

Application	Minimum efficiency for (in percent)—		
	HC	CO	NO_x
Oxididation converter	70	70	(1)
Three-way converter	70	70	30
Three-way-plus-oxidation	70	70	30

[1] No requirement.

(i) Converters produced after the qualification process has been successfully completed and shall be identical to the qualified converters in all material respects. A listing of these characteristics and the information to be supplied to EPA shall include the following:

(1) Catalyst supplier and address.

(2) General type of converter (e.g., oxidation, reduction, three-way, etc.).

(3) Number of each type of catalyst used per can (each individual monolith unit or "biscuit" is considered to be a separate catalyst for purposes of determining the number of catalysts per can).

(4) Substrate (e.g., monolithic, pelleted)—give configuration construction technique (e.g., extruded, laid-up, formed, Dravo disk, etc.), composition, supplier and address, composition of active constituents in substrate (grams or troy ounces); for monolithic substrates, give number of cells per square inch of frontal area and design tolerances, nominal cell wall thickness (e.g., in mils); for pelleted substrates, give pellet shape and dimensions, pellet bulk density, specify (if applicable) the use of more than one type of pellet (e.g., Rh or Pt/Pd), specify any geometrical distribution of pellets, and (if this is controlled in production) specify the mean impregnation depth (e.g., in microns) of active materials and include production tolerances.

(5) Washcoat—give composition of active constituents, and total active material loading (grams or troy-oz) in washcoat.

(6) Active material—give composition of active constituents, loading of each active material including design tolerances, total active material loading including design tolerances (grams or troy-oz).

(7) Container—dimensions, volume, materials used, technique of containment and restraint, method of constructing container, canner (if different from catalyst supplier), and insulation and shielding (converter and/or vehicle).

(8) Physical description—dimensions (e.g., length, width, height, etc.), weight (lbs), volume including design tolerances, active surface area (BET), and total active surface area including design tolerances.

(j) The converter manufacturer shall enclose with each converter a statement that it has been designed and manufactured to meet the EPA emission reduction requirements for the designated type of converter and shall warrant that when the vehicle is properly maintained, the converter will meet the emission reduction requirements specified in paragraph (h) for 25,000 miles and that the converter will not constitute a safety hazard.

(k) To ensure that new aftermarket converters have adequate external durability which will make them effective alternatives to OE converters, the converter manufacturer must design and warrant the external converter shell, including the end pipes, to last for five (5) years or 50,000 miles (whichever comes first) from the date of installation.

(l) The converter manufacturer shall enclose with each converter the specific vehicle applications of that converter and a warranty application card to be returned to the converter manufacturer which will include the vehicle owner's name and address, phone number, the make, model, year and mileage of the vehicle, the date of installation, the installing dealer's name and address and the part number(s) installed. All such cards or applications must be retained by the converter manufacturer for a period of five (5) years.

(m) New converter manufacturers shall report to EPA semi-annually the information contained on the warranty cards received

and the number of each type of converter produced during the period. The warranty card information shall consist of *either* a listing of the names and addresses of dealerships purchasing new converters, and the number of each type of converter sold or installed by each dealer *or* copies of all completed warranty cards received by the manufacturer. In either case, such information shall be submitted within 30 days of the end of each period. The reporting periods shall end on June 30th and December 31st of each year.

2. Used Converters

A used converter is defined for purposes of these guidelines as a previously used OE converter which does not meet the definition of a new converter. This includes used pelleted OE converters which have had the pellets replaced with new or used OE equivalent pellets. For used converters, no durability testing is required but each converter must be tested as specified below. *Only* used OE converters can qualify under this procedure. The types of tests are: (1) Container mechanical integrity check, (2) substrate mechanical integrity check, and (3) performance test.

(a) Each converter must be identified with respect to application category. The application category is defined as those vehicles for which the converter was the original production converter.

(b) The converter shall be inspected by the remanufacturer to determine which type of converter it is—oxidation converter, three-way converter or three-way plus-oxidation converter—and that the container (the "can") is structurally sound. There must be no leak paths in the can. The can must have acceptable backpressure characteristics, i.e., not be plugged. The substrate must be sound and not be melted or attrited. It shall not rattle.

(c) The performance test which shall be used for used converters is similar to the General Motors "Cell 102" test, and is as follows: A converter originally at room temperature is subjected to an exhaust flow of known composition and temperature. Because of the exothermal chemical reactions that occur, the converter heats up. Therefore two important converter parameters, light-off and stabilized efficiency, are measured on the same test. Each converter is tested and the exhaust gas constituents are read before and after the converter. Converter efficiency values for HC and CO conversion are computed at 120 seconds and 200 seconds. A light-off test and stabilized efficiency test can be performed consecutively. The exhaust is set to the control parameters while bypassing the converter through a pipe set to a back-pressure equal to the test system. At time=zero, the exhaust stream is switched into the converter system and a strip chart records exhaust gas constituents (before and after the converter) versus time. From this chart the conversion efficiency vs. time curve can be established. Each converter must meet all applicable requirements in Table 2.

TABLE 2.—LIGHT-OFF AND STABILIZED CONVERSION EFFICIENCY VALUES FOR USED OE CONVERTERS

[In percent]

Converter type	Minimum efficiency at 120 seconds		Minimum efficiency at 200 seconds	
	HC	CO	HC	CO
Oxidation	50	50	75	75
Three-way	50	50	75	75
Three-way-plus oxidation	50	50	75	75

The control parameters for this test are:

1. Engine type and Displacement: V–8, 350 to 360 CID.
2. Engine speed: 1800 ±20 RPM.
3. Converter Inlet CO: 2%±0.05% CO.
4. Converter Inlet Temperature: 730° ±40° F (set using engine load).
5. Air Injection Pump: 20 CID, (Maximum).
6. Air Injection Drive Ratio: 1.5:1 (Maximum).
7. Converter Mounting: The converter may not be located closer than two (2) feet from the location in the exhaust system where the exhaust from the two engine banks is joined together.
8. Converter pre-test temperature: 90 °F (maximum normally, 100 °F if room temperature makes it necessary due to outside ambient temperatures above 90 °F).

(d) At the option of the used converter remanufacturer, small size converters (less than 100 cubic inches of converter volume) may be tested using a smaller engine if the following additional requirements are met: The oxygen concentration at the converter inlet is 5 percent ±0.5 percent, and the converter space velocity is not less than 25,000 hr—1.

(e) The converter remanufacturer shall enclose with each used converter a statement that it has been tested according to the test procedures for used converters and meets all applicable requirements at the time of testing.

(f) The converter remanufacturer shall enclose with each used converter the specific applciation(s) of that converter.

(g) The converter remanufacturer shall report to EPA on a semi-annual basis the names and complete addresses of the persons or companies to whom it distritues along with the number of each type converter sold to each. This information shall be submitted within 30 days of the end of each period. The reporting periods shall end on June 30th and December 31st of each year.

C. Labeling

The converter manufacturer or remanufacturer shall lable each new or used converter with a visible, permanent, nondestructible label or stamp, which will identify the manufacturer's code (to be issued by EPA when requested by letter), vehicle application code (to be supplied by the manufacturer to EPA), the month and year of manufacture, and information about whether the converter is new or used. The label information shall be in the following formats:

(1) New Converters—N/XX/YYYY/ZZZZ
(2) Used Converters—U/XX/YYYY/ZZZZ

N—is for a new converter designation
U—is for a used converter designation
XX—is the manufacturer code issued by EPA
YYYY—is to be a numerical designation of the vehicle application(s)
ZZZZ—is the month and year of manufacture (i.e., "0186" for January, 1986)

D. Manufacturer's and Remanufacturer's Representations

A manufacturer's or remanufacturer's determination that its converters meet EPA's acceptance criteria does not constitute a certification, accreditation, approval, or any other type of endorsement by the Environmental Protection Agency of any claims concerning pollution control or any other alleged benefits. No claim of any kind, such as "Approved [or Certified] by the Environmental Protection Agency," may be made in any advertising or other oral or written communications. If true, statements such as the following may be made: "meets the emissions reductions requirements and criteria required by the U.S. Environmental Protection Agency which would allow the proper installation of the converter without the installer being liable for violating the tampering prohibition of the Clean Air Act."

E. Confirmatory Testing or Auditing by EPA

EPA reserves the right to inspect facilities and records, to observe testing and to run confirmatory tests to validate any part of the qualification process. If EPA finds that a manufacturer's or remanufacturer's converters do not meet the applicable criteria, EPA shall notify the manufacturer or remanufacturer of such finding, and that the manufacturer or remanufacturer may be liable for causing tampering for any applicable converter installations (past or future) and that the continued installation of the converters by regulated parties may make those parties liable for violations of section 203(a)(3) of the Clean Air Act.

F. Installation Requirements

In order for the installation by a regulated entity of an aftermarket converter meeting the conditions described in A through E, above, not to be considered a violation of section 203(a)(3) of the Act, the converter must:

(1) Be installed only in situations as defined in A above;

(2) Be in the same location as the original converter;

(3) Be the same type of converter as the original converter (i.e., oxidation, three-way or three-way-plus oxidation);

(4) Be the proper converter for the vehicle application as determined and specified by the manufacturer;

(5) Be connected properly to any existing air injection components on the vehicle;

(6) Be installed with all the other required converters for the particular application if more than one converter was installed originally by the vehicle manufacturer or, in the case of new aftermarket converters, if more than one converter was specified by the converter manufacturer; and

(7) Be accompanied by the warranty information card, filled in by the installer, if the converter is a new converter.

G. Notification of EPA by Catalyst Manufacturers and Remanufacturers

Any converter manufacturer or remanufacturer which markets converters under these guidelines must notify EPA of its intent to do so thirty (30) days prior to the actual introduction of each product line. New converter manufacturers must include or have submitted a summary of test results including vehicles tested, method of mileage accumulation, name and location of testing facility, test results, intended vehicle application(s), and the converter information specified in B.1.(i). Used converter remanufacturers must include a description of the test facility and its location and the intended vehicle applications of the converters). The information shall be sent to EPA (EN-397F), 401 M Street, S.W., Washington, D.C. 20460. Manufacturers and remanufacturers shall include any other information which they deem relevant to a determination that the subject converters meet the requirements set forth in these guidelines.

H. Notification of Dealers and Distributors by Converter Manufacturers and Remanufacturers.

Any converter manufacturer or remanufacturer which markets under these rules shall have a system in place to notify and shall notify all of its known dealers and distributors of the proper installation requirements and restrictions which are applicable to parties named in section 203(a)(3) of the Clean Air Act as they apply to the use of its converters. If the manufacturer or remanufacturer is notified by the EPA that converters produced or sold by it do not meet the applicable acceptance criteria described above, the manufacturer or remanufacturer shall promptly notify all of its known dealers and distributors of that fact and that the continued installation of the affected converters may be considered to be violations of section 203(a)(3) of the Clean Air Act.

[FR Doc. 86-17555 Filed 8-4-86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50537; FRL-2945-8]

PBBs and TRIS; Proposed Determination of Significant New Use

Correction

In FR Doc. 86-15170 beginning on page 24555 in the issue of Monday, July 7, 1986, make the following corrections:

1. On page 24555, in the second column, in the fifth line of the second paragraph, the section reference should read "5(a)(1)(A)".

2. On the same page, in the third column, in the ninth line of the first complete paragraph, "PBBs for Tris" should read "PBBs or Tris".

§ 721.230 [Corrected]

3. On page 24558, in the third column, the ninth line of § 721.230(a)(1) should read "(CAS No. 27753-52-2);".

BILLING CODE 1505-01-M

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40 CFR Part 721

[OPTS-50556; FRL-3054-3]

Benzenamine, 3-Chloro-2,6-Dinitro-N,N-Dipropyl-4-(Trifluoromethyl)-; Proposed Determination of Significant New Uses

Correction

In FR Doc. 86-16648, beginning on page 26557, in the issue of Thursday, July 24, 1986, make the following corrections:

1. On page 26557, second column, in the "Summary", second line, "signification" should read "significant."

2. On the same page, third column, in the "Address", second paragraph, eighth line, "Rm. NE-6004" should read "Rm. NE-G004".

3. On the same page, third column, in "Supplementary Information", first paragraph, ninth line, "in" should read "is".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 81

Purchase of Insurance and Adjustment of Claims; State Listings

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Further notice of proposed rule.

SUMMARY: This document amends a proposed rule, published on July 25, 1986, 51 FR 26726, which listed the States in which there exists a critical crime insurance availability problem which has not been resolved at the State level and deleted the States of Arkansas, Iowa, Louisiana, Maryland, Massachusetts, North Carolina, Ohio, and Pennsylvania, as of September 17, 1986; Colorado, as of September 30, 1986, and Missouri and Virginia, as of October 31, 1986.

In order to provide more adequate time for all of these States to prepare for resolving any crime insurance availability problem at the State level, all of the dates listed above are revised by specifying that the deletion of all such States will become effective on the same date, namely, December 31, 1986.

DATE: The date for comments is extended from September 23, 1986 to October 6, 1986.

FOR FURTHER INFORMATION CONTACT: Robert J. De Henzel, (202) 646-3440.

SUPPLEMENTARY INFORMATION: Other parts of the preamble remain the same.

PART 81—PURCHASE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Item 2 of the document published at 51 FR 26726 is amended to read:

2. Section 81.1(b) is revised to read as follows:

§ 81.1 [Amended]

* * * * *

(b) On the basis of the information available, the Federal Insurance Administration has determined that the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and the States set forth in this paragraph have an unresolved critical market availability situation that requires the operation of the Federal Crime Insurance Program therein as of December 31, 1986, should the Program be continued by Congress past its current statutory expiration date of September 30, 1986.

Accordingly, the Program, if extended, is in operation in the following jurisdictions after December 31, 1986.

Alabama	Illinois	District of Columbia
California	Kansas	Puerto Rico
Connecticut	New Jersey	Virgin Islands
Delaware	New York	
Florida	Rhode Island	
Georgia	Tennessee	

Dated: July 31, 1986.

Francis V. Reilly,

Deputy Federal Insurance Administrator, Federal Insurance Administration.

[FR Doc. 86-17527 Filed 8-4-86; 8:45 am]

BILLING CODE 6718-01-M

Notices

Federal Register
Vol. 51, No. 150
Tuesday, August 5, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Special Volunteer Programs; Availability of Funds Demonstration Grant

Background

Definitions of literacy/illiteracy and estimates of adults in the United States who fall into these categories are debatable. Modest estimates place the number of adults who lack basic literacy skills at 23 million. Those who expand the definition of literacy estimate that as many as 76 million adults are illiterate. Despite the disagreements about definitions and number, there is little debate that a significant number of adults in this country have difficulty with and lack choices about daily life situations because of their limited basic skills.

It is estimated that over 80% of the people in the United States reside in urban areas; i.e. a geographic area with a concentrated population of over 100,000. It is also widely recognized that urban areas have unique issues and needs based on the economic, social and political dimensions of a concentrated population base. An urban community is defined as a community "with a high population density, predominance of non-agricultural occupations, and a high degree of specialization resulting in a complex division of labor and a formalized system of local government. Urban communities also tend to be characterized by a heterogenous population, prevalence of impersonal secondary relations and dependence on formal social controls." (Modern Dictionary in Sociology, Barnes and Noble)

Adult illiteracy has particular importance in urban areas. Concentrations of poor, minority and often immigrant populations yield increased numbers of illiterate or non-english speaking adults while a highly specialized nature of urban jobs makes it more difficult for these adults to find employment. In addition, it is often difficult for adults to find support and assistance in the impersonal atmosphere of urban areas.

The purpose of this announcement is to solicit private sector programs that support the use of existing resources and generate new volunteer resources for the expansion of quality literacy services in urban areas. The intention is to capitalize on the current national literacy movement and initiatives and to ensure long term support for and focus on urban literacy services. Applicants must match the $250,000 anticipated under this announcement with $250,000 specifically from private sector funds.

A. The Office of Voluntarism Initiatives

ACTION announces the availability of funds during fiscal year 1986 for demonstration grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113; Title I, Part C, 42 U.S.C. 4992).

The purpose of this program is to strengthen and supplement efforts to meet a broad range of needs, particularly those related to poverty, by encouraging and enabling persons from all walks of life and from all age groups to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may help to meet such needs.

The purpose of this process is to identify and support an innovative project that provides grants, training and advocacy in support of collective literacy efforts in urban areas.

Consideration will be given to projects promoting the utilization of volunteer service, including retired and other senior citizens, to address the problem of illiteracy in urban areas.

Applicants must be able to generate new public and private financial and in-kind resources.

In planning and implementing approaches to assisting in eradication of illiteracy, applicants shall build upon existing knowledge on voluntarism.

Applicants shall describe their consultation with private and public agencies as it pertains to the need to help individuals improve their ability to read, write, or comprehend or to perform basic arithmetical computation.

Objectives

To develop Volunteer Demonstration Projects which address areas of human and social concern where citizens, as volunteers, can contribute toward individual self-reliance and community self-sufficiency.

The project funded under this announcement must be able to: (1) Coordinate and fund literacy efforts in ten urban areas as model demonstration sites to be replicated through public and private resources; (2) arrange for training of representatives of the ten demonstration sites; (3) provide comprehensive evaluations of the ten demonstration sites; (4) provide regular vehicles of communication to and among programs and supporters of literacy efforts in urban areas; (5) identify and contact state and national organizations, agencies, and departments, which address or could address urban literacy issues; (6) co-sponsor a conference which would report the progress of the demonstration sites and provide a forum for discussion, planning and training regarding literacy in urban areas; (7) develop an effective plan of management that insures proper and efficient administration of the project; (8) develop a clear description of how the objectives of the project relate to the purpose of the program; (9) provide a complete range of basic human needs and supportive services; and (10) match the $250,000 anticipated under this announcement with $250,000 from private sector funds.

B. Eligible Applicants

Only applicants from private, non-profit incorporated organizations and public agencies will be considered.

C. Available Funds and Scope of the Grant

ACTION anticipates awarding a $250,000 grant to an applicant that can match that amount with $250,000 from private sector funds.

Publication of this announcement does not obligate ACTION to award a grant or to obligate any specific amount of money for a demonstration grant.

D. General Criteria for Grant Selection

Grant applications will be reviewed and evaluated in comparison with the criteria outlined below, as appropriate, as well as conformance to the

instructions included in the application. Grant applications that have demonstrated support and commitment to community volunteer involvement in eradicating illiteracy will be given preference.

1. Potential to recruit and train volunteers in areas of priority.

2. Promise of developing innovations or providing knowledge in areas of priority that are significant to national program development.

3. Potential for replication of the project model and plans for implementation and dissemination of project results, including any products such as reports and manual for use by others.

4. Carefully formulated measurable time phased objectives and feasibility of methods for meeting those objectives.

5. Capability of proposed staff.

6. Likelihood of completion of project within proposed timetable.

7. Feasibility of proposed budget.

8. Adequacy of plans for data gatheing and evaluation.

9. Letters of support from collaborating agencies and organizations where such could be expected to contribute to the value or success of the project.

10. Plans for continuation of the activities and self-sufficiency of the program following the completion of the project supported by ACTION funds.

11. A letter of commitment from private sector entities, matching funds with the anticipated $250,000 under this announcement.

E. Application Review Process

ACTION's Demonstration Grants Division in the Office of Voluntarism Initiatives, which has expertise in volunteer demonstration programs, will review and evaluate all eligible applications submitted under this announcement. ACTION's Associate Director for the Office of Voluntarism Initiatives will make the final selection from among the highest ranked applications. ACTION reserves the right to ask for evidence of any claims of past peformance or future capability.

F. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the Associate Director for the Office of Voluntarism Initiatives, Room M–516, 806 Connecticut Avenue NW., Washington, DC 20525. The deadline for receipt of applications is September 2, 1986. Only those applications that are received by 5:00 p.m. on this date will be eligible.

All grant applications must consist of

a. Application for Federal Assistance (SF 424, Pages 1–2 and ACTION Form A–1017, pages 3–7) with a narrative budget justification and a narrative of project goals and objectives.

b. CPA certification of accounting capability.

c. Articles of incorporation.

d. Proof of non-profit status or an application for non-profit status, which should be made through documentation.

e. Resume of candidates for the position of project director, if available, or the resume of the director of the applicant agency or project.

f. Organization chart of the applicant organization showing how the project is related to the organization.

To receive an application form, please call ACTION's Office of Voluntarism Initiatives, (202) 634–9749.

Signed in Washington, DC on July 29, 1986.

Donna M. Alvarado,

Director.

[FR Doc. 86–17549 Filed 8–4–86; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Human Nutrition Board of Scientific Counselors' Task Group Meeting on Nutrition Education

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463), 86 Stat. 770–776), the Office of the Secretary announces the following meeting:

Name: Human Nutrition Board of Scientific Counselors' Task Group on Nutrition Education.

Date: September 10, 1986.

Time and Place: 9:00 a.m.,–5:00 p.m.; Room 1333 S. Agriculture Building, United States Department of Agriculture, Independence Avenue, between 12th and 14th Streets, SW., Washington, DC.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written coments before or after the meeting with the contact person below.

Purpose: To determine the kinds of initiatives required to formulate and integrate a broad-based nutrition education program to utilize present resources with greater efficiency. A report will be prepared for submission by the Board to the Secretary of Agriculture.

Contact person: Anne Winslow, Confidential Assistant, Office of the Assistant Secretary for Science and Education, U.S. Department of Agriculture, Room 217–W, Administration Building, Washington, DC 20250, telephone (202) 447–5035.

Done at Washington, DC, this 29th day of July 1986.

Orville G. Bentley,

Assistant Secretary, Science and Education.

[FR Doc. 86–17539 Filed 8–4–86; 8:45 am]

BILLING CODE 3410–01–M

Forest Service

Pacific Crest National Scenic Trail Advisory Council, Northern California Sub-Committee; Meeting

The Northern California Subcommittee of the Pacific Crest National Scenic Trail Advisory Council will meet at 12:30 p.m. on August 25, 1986, at the Hat Creek District Headquarters, Highway 299, Fall River Mills, Calfornia. The meeting will begin at 12:30 p.m.

The subcommittee will discuss and develop recommendations for the Advisory Council and Secretary of Agriculture on broad questions of policy, programs, and procedures affecting the Northern California portion of the Pacific Crest Trail. Specifically, it will discuss the trail crossing of the railroad near Belden, California, and the highway bridge near Seiad Valley, California; Forest land and resource management plans; and preliminary plans for the annual meeting of the council in Burney, California in June 1986.

The meeting will be open to the public. Persons who wish additional information should contact Dick Benjamin, Assistant Regional Forester for Recreation, Pacific Southwest Region, Forest Service, 630 Sansome Street, San Franciaco, California. (415) 556–1658.

Dated: July 25, 1986.

Zane G. Smith, Jr.

Chairman.

[FR Doc. 86–17520 Filed 8–4–86; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Aguilar School Critical Area Treatment RC&D Measure, Colorado

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, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Aguilar School Critical Area Treatment RC&D Measure, Las Animas County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Boone, State Conservationist, Soil Conservation Service, 2490 West 26th Avenue, Denver, Colorado 80211, telephone (303) 964–0292.

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 Environmental Impact Statement are not needed for this measure.

This critical area treatment measure concerns a plan to treat erosion around school buildings and sedimentation on school property. The planned works of improvement include shaping and grading, installing waterways and culverts, constructing water control structure, planting trees and grass, and installing a landscape timber barrier.

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 at the above address to fill single-copy requests. 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: July 28, 1986.

Sheldon G. Boone,

State Conservationist.

[FR Doc. 86–17521 Filed 8–4–86; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Montana Advisory Committee; Meeting; Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission previously scheduled for August 8, 1986, convening at 10:30 a.m. and adjourning at 3:30 p.m., at the Northern Hotel, First & Broadway, Billings, Montana (FR Doc. 86–16712, Page 26728) has a new meeting date.

The meeting convening and adjourning times and location will remain the same. The meeting date will change to September 12, 1986.

Dated at Washington, DC, July 30, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86–17528 Filed 8–4–86; 8:45 am]

BILLING CODE 6335–01–M

Ohio Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon, on August 23, 1986, at the Bond Court Hotel, 777 St. Clair Avenue, Cleveland, Ohio. The purpose of the meeting is to plan a community forum on housing.

Persons desiring additional information, or planning a presentation to the Committee, should contact Clark Roberts, Director of the Midwestern Regional Office at (312) 353–7371, (TTD 312/886–2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 30, 1986.

Yvonne E. Schumacher,

Program Specialist for Regional Programs.

[FR Doc. 86–17529 Filed 8–4–86; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Technical Data Letter of Explanation
Form number: Agency—EAR 379.5(d); OMB—N/A
Type of request: Existing collection in use without an OMB control number
Burden: 280 respondents; 2,823 reporting/recordkeeping hours
Needs and uses: Exporters and reexporters of technical data provide information pertinent to the exporting transaction through the letter of explanation. The information is used to determine the suitability of approving an export application or reexport request.
Affected public: Businesses or other for-profit institutions; small businesses or organizations
Title: On Occasion/recordkeeping
Respondent's obligation: Required to obtain or retain or benefit
OMB desk officer: Sheri Fox, 395–3785

Agency: National Oceanic and Atmospheric Administration
Title: Coast Pilot Report
Form number: Agency—NOAA 77–6; OMB—0648–0007
Type of request: Extension of the expiration date of a currently approved collection
Burden: 500 respondents; 250 reporting hours
Needs and uses: The information collected is used to update the nine national books titled U.S. Coast Pilots. The Pilots include essential marine information important to navigators of United States coastal and intracoastal waters, that cannot be shown graphically on the charts.
Affected public: Individuals; federal agencies or employees
Frequency: On occasion
Respondent's obligation: Voluntary
OMB desk officer: 395–3785

Agency: National Oceanic and Atmospheric Administration
Title: Cooperative Charting Program
Form number: Agency—NOAA 77–4; OMB—0648–0022
Type of request: Revision of a currently approved collection
Burden: 3,000 respondents; 45,000 reporting hours

Needs and uses: NOAA's National Ocean Service (NOS) produces nautical charts to ensure the safe navigation on the nation's waterways. NOS has cooperative charting programs with the United States Power Squadrons and the United States Coast Guard Auxiliary for their members to provide NOS with chart correction data. Data is used to revise charts.
Affected public: Non-profit institutions
Frequency: On occasion
Respondent's obligation: Voluntary
OMB desk officer: Sheri Fox, 395–3785

Agency: International Trade Administration
Title: Trade and Technical Literature of Commercial NEWS USA
Form number: Agency—ITA—4101P; OMB—N/A
Type of request: New collection
Burden: 300 respondents; 100 reporting hours
Needs and uses: This information collection will be used by the Department to promote in overseas markets U.S trade and technical literature available for export. Firms wishing to promote their products overseas through the Department must provide data so that U.S. Commercial Officers have sufficient information on the product.
Affected public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: Sheri Fox, 395–3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: July 31, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division.

[FR Doc. 86–17584 Filed 8–4–86; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business and Development Agency
Title: Research on the Impacts of State and Local Regulations on Small and Minority Businesses
Form number: Agency—NA; OMB—NA
Type of request: New collection
Burden: 15,000 respondents; 3,750 reporting hours
Needs and uses: This collection will be used to assess the impact of state and local government regulations on minority business development.
Affected public: Businesses or other for-profit institutions
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: July 31, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86–17583 Filed 8–4–86; 8:45 am]

BILLING CODE 3510-CW-M

University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 86–227. Applicant: University of California, Livermore, CA 94550. Instrument: Thermal-ionization, Multicollector Mass Spectrometer, Model 354. Manufacturer: V.G. Isotopes Ltd., United Kingdom. Intended Use: See notice at 51 FR 22844.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is equipped with a fully automated multiple collector system capable of providing an external precision on Neodymium (300 ng) of 0.003%. This capability is pertinent to the applicant's intended purposes. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Leonard E. Mallas,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 86–17563 Filed 8–4–86; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

International Laboratory Accreditation Conference (ILAC) 1986

AGENCY: National Bureau of Standards, Commerce.

ACTION: Invitation to participate in ILAC 86 Conference and announcement of public meeting.

DATES: Ninth ILAC meeting, Tel Aviv, Israel, November 3–11, 1986, Open Pre-Conference Meeting, National Bureau of Standards, Gaithersburg, MD, October 1, 1986. Closing Date for Delegate Appointment, September 1, 1986.

SUMMARY: The Ninth International Laboratory Accreditation Conference (ILAC) will be held in Tel Aviv, Israel, November 3–7, 1986. ILAC is an informal organization of approximately 42 nations and 12 international organizations whose overall purpose and objective is to promote: (1) The development of national programs for accrediting testing laboratories, (2) the employment of harmonized accreditation criteria, and (3) the development of bilateral or multilateral arrangements which would encourage importers to accept the results of tests and data made by laboratories that have been accredited under a laboratory accreditation program in exporting nations.

Conferences in support of ILAC's stated purpose have been held since 1977, to develop information about laboratory accreditation systems, to provide a forum for discussing differences among such systems, to describe basic principles and criteria for operating such systems, and to develop bilateral or other arrangements which

would establish mutual recognition of such systems or of test reports issued by laboratories accredited under such systems. These bilateral arrangements are intended to minimize technical barriers to trade.

The United States Delegation is chaired by the Director of the Office of Product Standards Policy. Anyone interested in attending this meeting in Tel Aviv as a member of the U.S. Delegation, using his or her own financial resources, for registration fees, hotel accommodations, food, and travel expenses, is invited to submit a request by September 1, 1986, to Dr. Stanley Warshaw, Director, Office of Products Standards Policy, National Bureau of Standards, ADMIN A603, Gaitherburg, MD 20899. Such persons should have a background in standards development, laboratory accreditation, product testing or product certification activities.

Notice is also given that the U.S. Delegation will hold an open pre-conference meeting at 10:00 a.m. on Wednesday, October 1, 1986, in Room A1034 of the Administration Building at the National Bureau of Standards, Gaithersburg, Maryland, to prepare for the conference. The meeting attendees and delegates will: (1) Review ILAC Task Force and Committee reports, (2) consider the position that the U.S. Delegation should take in response to those reports, (3) prepare any proposed resolution for introduction at ILAC 86, and (4) consider any additional matters of interest. The pre-conference meeting will be chaired by Dr. Warshaw.

Any one wishing to attend this meeting, which is open to the public, or provide information on proposals for consideration by the delegation, should notify Dr. Stanley I. Warshaw, National Bureau of Standards, ADMIN A603, Gaithersburg, MD 20899, telephone: 301–921–3751, by September 15, 1986.

Dated: July 30, 1986.

Ernest Ambler,

Director.

[FR Doc. 86–17564 Filed 8–4–86; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia; Correction

July 31, 1986.

The eight-month restraint limit designated for Category 317pt. (other than sateen fabric) in the tenth line of the table in the letter to the Commissioner of Customs dated June 10, 1986 (51 FR 21586) should be 12,000,000 square yards instead of 1,333,333 square yards TSUS items 320.—through 331.—with statistical suffixes 51, 52, 83, 85, 89, 91, and 95.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–17582 Filed 8–4–86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 9:30 AM to 1:30 PM on August 19, 1986 and from 8:30 AM to 3:30 PM on 20 August 1986. The meeting will be held at the Radisson Mark Plaza Hotel, 5000 Seminary Road West, Alexandria, Virginia 22311. The purpose of the meeting is to review the Department of Defense's computer adaptive testing efforts, and equating plans for the Armed Services Vocational Aptitude Battery Forms 15, 16 and 17. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. A.R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, the Pentagon, Washington, DC 20301–4000, telephone (202) 697–9271 no later than August 14, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense

July 31, 1986.

[FR Doc. 86–17579 Filed 8–4–86; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Women in the Service; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the responses to the Recommendations, Requests for Information, and Continuing Concerns made by the Committee at the 1986 Spring Meeting; discuss current issues relevant to women in the Services; and finalize the program for the next semiannual meeting scheduled for 26–30 October 1986 in Williamsburg, Virginia.

All meeting sessions will be open to the public.

DATES August 28, 1986, 1:30–5:00 p.m. and August 29, 1986, 9:30–11:30 a.m.

ADDRESS: OSD Conference Room 1E801 #7, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

SUPPLEMENTARY INFORMATION: Persons desiring to (1) attend the Executive Committee Meeting or (2) make oral presentations or submit written statements for consideration at the meeting must notify the point of contact listed above no later than August 11, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 30, 1986.

[FR Doc. 86–17580 Filed 8–4–86; 8:45 am]

BILLING CODE 3810-01-M

Per Diem, Travel and Transportation Allowance Committee; Establishment of Actual Expense Reimbursement Ceilings

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Establishment of actual expense reimbursement ceilings.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 134. This bulletin establishes new actual expense reimbursement ceilings for travel in Alaska, Hawaii, Puerto Rico and possessions of the United States by Federal Government employees. Bulletin Number 134 is being published in the **Federal Register** to assure that travelers are reimbursed actual subsistence expenses in appropriate amounts.

EFFECTIVE DATE: July 1, 1986.

SUPPORTING INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance

Committee and establishes actual subsistence expense reimbursement ceilings for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 134

TO THE HEADS OF THE EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

Subject: Maximum per Diem Rates and Actual Expense Reimbursement Ceilings for Official Travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and Possessions of the United States by Federal Government Civilian Employees

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702(a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealth of Puerto Rico, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. This bulletin revises the ceiling on reimbursements for actual subsistence expenses authorized civilian personnel when traveling to those areas described in paragraph 1. Effective 1 July 1986, for travel in those areas involving special or unique circumstances, the reimbursement of actual and necessary itemized daily subsistence expenses shall not exceed 150 percent of the applicable locality per diem allowance (rounded to the next higher dollar) or the applicable per diem allowance plus $50, whichever is greater. For regulations governing the reimbursement of actual subsistence expenses, see Part 8 of the Federal Travel Regulations of the General Services Administration, or pertinent agency implementing regulations.

3. Maximum per diem rates announced by the previous Bulletin Number 133 remain unchanged.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 31, 1986

[FR Doc. 86-17581 Filed 8-4-86; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Consent Order With Total Petroleum, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed consent order between the Department of Energy (DOE) and Total Petroleum, Inc. (Total) should be issued as a final order of the DOE without amendment. The consent order resolves all remaining issues relating to Total's compliance with the federal petroleum price and allocation regulations for the period from January 1, 1973 through January 27, 1981. Total will pay DOE $5 million, within ten (10) days of the latter of the effective date of this Consent Order, or of the "Payment Date" pursuant to ¶ II.B.1.b. of the Settlement Agreement in *In Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.). Persons claiming to have been harmed by Total's alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA).

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, Department of Energy, Washington, DC 20585. Telephone: 202-252-4387.

SUPPLEMENTARY INFORMATION:

I. Background

On June 17, 1986, ERA issued a notice announcing a proposed consent order between DOE and Total which would resolve all remaining matters relating to Total's compliance with federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981. (51 FR 22849, June 23, 1986). The June 23 notice provided in detail the basis of ERA's preliminary view that the settlement provided a favorable recovery by the government and was in the public interest. The notice solicited written comments from the public concerning the terms and conditions of the settlement.

II. Terms of Consent Order

The proposed consent order requires Total to pay $5 million to DOE within ten (10) days of the latter of the effective date of the Consent Order, or the "Payment Date" pursuant to ¶ II.B.1.b. of the Settlement Agreement *in Re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.). DOE will hold the funds in an interest bearing account and petition the DOE Office of Hearings and Appeals (OHA) to implement special refund proceedings under 10 CFR Part 205, Subpart V.

The $5 million is in settlement of Total's potential liability of $5.2 million, plus interest. Of the $5 million, $2 million is attributable to issues concerning Total's compliance with the entitlements program, case number NOOS90160, OHA case number HRO-0295, and the remaining $3 million is attributable to issues concerning refined products, case numbers 540S00227 and 740S01234. The June 23 notice provides additional information regarding these cases.

Under the consent order, Total and DOE release each other from all claims, liabilities and causes of action each may have under the price and allocation regulations. The consent order also provides for the maintenance of records, disclosure of information, and for its enforcement.

III. Comments Received

ERA received on comment from the Controller of the State of California. The Controller indicates that the funds received from Total attributable to entitlements allegations should be governed by the Settlement Agreement in the *Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.) and that the balance of the funds should be submitted to the OHA for a special refund poceeding under 10 CFR Part 205, Subpart V. The consent order requires that ERA petition the OHA to implement a Subpart V proceeding with regard to all the funds received from Total. That disposition is consistent with the Settlement Agreement, under which DOE will issue a restitutionary policy statement. That policy is contemplated by this settlement in that the consent order calls for a Subpart V proceeding for the distribution of the crude oil funds. The distribution of funds to the states requested by the Controller will be an element of the OHA proceeding.

The consent order provides for a Subpart V proceeding with regard to the product funds as well. Accordingly, it appears that the Controller's comments are already addressed by the terms of the consent order.

ERA received no comments objecting to the consent order, and thus, will make it effective as described below.

IV. Decision

As stated in the notice publishing the proposed consent order for comment, ERA believes the settlement is a satisfactory resolution of the matters remaining unresolved between DOE and Total. Accordingly, ERA has determined to issue the consent order as a final order.

By this notice, and pursuant to 10 CFR 205.199J, the proposed consent order between Total and DOE executed on June 12, 1986, is made a final order of the Department of Energy, effective on the date of publication of this notice in the **Federal Register**.

Issued in Washington, DC, on July 24, 1986.

Carl A. Corrallo,

Solicitor, Economic Regulatory Administration.

[FR Doc. 86-17551 Filed 8-4-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA86-1-60-004]

Locust Ridge Gas Co.; Proposed Changes in FERC Gas Tariff

July 31, 1986.

Take notice that on July 23, 1986 Locust Ridge Gas Company (Locust Ridge) tendered for filing as a part of its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 3, the following tariff sheets to be effective as indicated:

March 1, 1986

Original Volume No. 1—Substitute Thirteenth Revised Sheet No. 1A.

Original Volume No. 3—Substitute Twentieth Revised Sheet No. 1A.

July 1, 1986

Original Volume No. 1—Fourteenth Revised Sheet No. 1A.

Original Volume No. 3—Twenty-First Revised Sheet No,. 1A.

Locust Ridge states that the purpose of filing the sheets to be effective March 1, 1986 is to comply with the Commission's Order Denying Rehearing issued May 22, 1986 in Docket No. TA86-1-60-002, and reflects the removal of $18,359.20 of unrecovered purchased gas costs from the company's previously filed rates; decreasing by $0.0225 per MMBtu from those previously filed rates.

Locust Ridge further states that the proposed tariff sheets to be effective July 1, 1986 are filed, out-of-cycle, to reflect lower purchased gas costs brought about by reduced "market-out" levels contractually made effective as of the same date by the company's jurisdictional resale customers. Locust Ridge states that the proposed sheets reduce its rates by $1.0752 per MMBtu, and the company asks that the Commission waive its regulations to the extent necessary to allow the company to extend these reduced rates through its next in-cycle PGA period (September 1, 1986 through February 28, 1987) with this filing.

A copy of this filing has been served upon Locust Ridge's jurisdictional customers affected by this filing.

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 §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 7, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any 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. 86-17571 Filed 8-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-142-000]

Natural Gas Pipeline Co. of America; Proposed Change to FERC Gas Tariff

July 31, 1986.

Take notice that on July 25, 1986, Natural Gas Pipeline Company of American (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective August 25, 1986.

Seventh Revised Sheet No. 121
First Revised Sheet No. 121A
Original Sheet No. 121B
Original Sheet No. 121C

Natural states that the purpose of the tariff sheets is to provide the addition of paragraph 18.11 to the General Terms and Conditions of Natural's FERC Gas Tariff. If approved, the proposed tariff provision will permit Natural to adjust its projected average purchased gas cost at any time between its regular semi-annual Purchase Gas Adjustment (PGA) filings on twenty-four hours notice. Such adjustment may be made to recognize on a more timely basis the rate impact of known and measurable changes in the average cost of purchased gas from the rate established in the immediately preceding semi-annual PGA filing.

Such adjustments shall be limited the cost impact of known and measurable changes in gas costs and may further reflect an increase or decrease in Natural's projected average cost of gas, provided that Natural shall be precluded from adjusting its rates above the level established in Natural's immediately preceding semi-annual PGA filing.

The tariff sheets being filed require Natural to file such changes at least one (1) day prior to the proposed effective date. Such filing will not be subject to the Notice requirements established by the Commission's regulations. Further, Natural's proposed tariff sheets require it to demonstrate that its actions are appropriate and that it is entitled to recover the under-recovered purchase gas costs which may result from Natural's election to adjust its rates pursuant to the new Paragraph 18.11, Third Revised Volume No. 1.

To recognize that Natural is unable to control precisely its average cost of gas, Natural's potential liability and demonstration of appropriateness will apply only to that portion of any under-recoveries in excess of three percent (3%) of the known and measurable changes in the actual cost of gas purchased during any PGA Adjustment period in which Natural elected to adjust its projected average cost of Purchased Gas pursuant the produced tariff sheets.

A copy of this filing is being mailed to Natural's jurisdictional customers and the interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before August 7, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-17572 Filed 8-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-94-001]

Sea Robin Pipeline Co.; Amended Tariff Filing

July 30, 1986.

Take notice that on July 21, 1986, Sea Robin Pipeline Company (Sea Robin) filed Substitute Original Sheet No. 4-A1 to its FERC Gas Tariff, Original Volume No. 1. The proposed effective date is July 1, 1986. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until July 24, 1986.

Sea Robin states that the purpose of the instant filing is to clarify its intent that the interruptible transportation rates filed on May 30, 1986, in compliance with 18 CFR 284.7 of the Commission's Regulations, will apply to all self-implementing interruptible transportation transactions under Part 284 of the Commission's Regulations which may be entered into subsequent to July 1, 1986. By letter order issued June 27, 1986, the Commission accepted the May 30th filing to be effective July 1, 1986. That filing pertained to "grandfathered" transactions which the Commission had authorized under 18 CFR 284.105.

Sea Robin requests waiver of the Commission's regulations to permit the proposed tariff sheet to become effective July 1, 1986. Sea Robin states that good cause exists for such waiver because the instant tariff sheet does not change the May 30th rates but merely clarifies Sea Robin's intent regarding the applicability of the rates.

Sea Robin further states that a copy of this filing has been mailed to each of its jurisdictional customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before August 6, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-17573 Filed 8-4-86; 8:45 am]

BILLING CODE 6717-04-M

[Docket No. TA86-3-9-002]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Rate Change Under Tariff Rate Adjustment Provisions

July 31, 1986.

Take notice that on July 25, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff:

First Revised Volume No. 1

Second Revised Sheet Nos. 20 and 21

Sixth Revised Volume No. 2

Fourth Revised Sheet No. 2AA
Fifth Revised Sheet No. 2AA
Second Revised Sheet No. 2DD
Third Revised Sheet No. 2DD

The proposed effective date for these sheets is July 1, 1986 with the exception of Fourth Revised Sheet No. 2AA and Second Revised Sheet No. 2DD which are proposed to be effective January 1, 1986.

Tennessee states that the revised tariff sheets are filed in compliance with the Commission's order in this proceeding issued June 30, 1986. Specifically, Second Revised Sheet Nos. 20 and 21 reflect the correction of several minor errors in the prices for Tennessee's gas purchases resulting in a further reduction in Tennessee's Current Purchased Gas Cost Rate Adjustment of 1.47 cents per MMBtu. Fifth Revised Sheet No. 2AA reflects a correction to the determination of the fuel use gas rate adjustment applicable to certain transportation rate schedules. Fourth Revised Sheet No. 2AA and Second Revised Sheet No. 2DD reflect the correct GRI surcharge effective January 1, 1986 and Third Revised Sheet No. 2DD reflects a correction in pagination.

The Commission's order in this proceeding also noted several pagination errors with respect to the tariff sheets filed on May 30, 1986. In order to correct the pagination errors, Tennessee is withdrawing the following tariff sheets which have been filed but have not been accepted.

First Revised Volume No. 1

First Revised Sheet Nos. 20 and 21 (Filed May 30, 1986, Docket No. TA86-3-9)
Second Substitute Original Sheet Nos. 20 and 21 (Filed April 7, 1986, Docket No. RP80-97)
Second Substitute Original Sheet No. 22 (Field April 7, 1986, Docket No. RP80-97)

Sixth Revised Volume No. 2

Fourth Revised Sheet No. 2AA (Filed May 30, 1986, Docket No. TA86-3-9)
Third Substitute Third Revised Sheet No. 2AA (Filed April 7, 1986, Docket No. RP80-97)
Third Revised Sheet No. 2DD (Filed May 30, 1986, Docket No. TA86-3-9)
Substitute Second Revised Sheet No. 2DD (Filed April 7, 1986, Docket No. RP80-97)

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before August 7, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-17574 Filed 8-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-137-024]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

July 31, 1986.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on July 23, 1986, tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2. The sheets are proposed to become effective on September 1, 1986 and were filed in accordance with Article X of Transco's

"Settlement Agreement As To Rates" approved by Commission order dated July 25, 1984 in Docket No. RP83–137. The revised tariff sheets reflect a "tracking" rate reduction of 0.3¢ per dt in the commodity rate or delivery charge of Transco's sales and long-haul transportation rate schedules.

Article X of the settlement agreement provides for adjustments to Transco's jurisdictional rates to give effect to inclusion in rate base of any decreases in the amount of Transco's outstanding advance payments after March 31, 1984. The rate reduction proposed is occasioned by a decrease of $15,323,675 in the advance payment balance of Transco from that which existed at June 30, 1985.

Transco further states that copies of the instant filing have been mailed to each of its customers, State Commissions and other parties to Docket No. RP83–137

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 Rule 211 and Rule 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 August 7, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–17575 Filed 8–4–86; 8:45]

BILLING CODE 6717–01–M

[Docket No. EF86–2041–001]

Electric Rates; Federal Rates; Intervention; Department of Energy; Bonneville Power Administration; Order Approving Variable Industrial Power Rate on An Interim Basis, Granting Intervention, and Requesting Additional Comments

Issued July 31, 1986.

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

Background

On June 16, 1986, the Bonneville Power Administration (BPA) filed a request for interim and final approval of its proposed Variable Industrial Power rate schedule VI–86 under sections 7(a)(2) and 7(i)(6) of the Pacific Northwest Electric Power Planning and Conservation Act (NPA) [1] and sections 300.20 and 300.21 of the Commission's regulations.[2] The VI–86 rate schedule is designed to guard against the loss of BPA's Direct Service Industrial (DSI) load, which is dominated by the aluminum smelter industry. The aluminum industry's purchases of energy have become erratic. At the same time, BPA states that it has a capacity and energy surplus. Thus, the loss of sales to the DSIs (which presently account for about 25% of BPA's sales) would allegedly create fiscal problems for BPA. BPA states that the VI–86 rate schedule would protect BPA's ability to repay the Federal investment as required by the NPA. It asks for an effective date of August 1, 1986.

The VI–86 rate schedule is a formula rate that would vary the price of electricity sold to aluminum smelters according to the U.S. market price of aluminum. When the price of aluminum is between 61 cents and 72 cents per pound, the composite rate for electricity under the VI–86 rate schedule would be equivalent to the then-effective average annual rate being charged under Rate Schedule IP–85 (currently 22.8 mills per kWh). When the price of aluminum falls below 61 cents per pound, the price of electricity would decrease by one mill for each one cent decrease in the aluminum price, down to a floor of 15 mills per kWh. Conversely, should the price of aluminum exceed 72 cents per pound (the estimated long-run variable cost of the least efficient smelter), the price of electricity would increase by 0.75 mill for each 1 cent increase in the aluminum price, to the upper rate limit of 28.6 mills per kWh. This rate would only be offered to those DSIs that enter into contracts with BPA obligating them to buy power under the VI–86 rate schedule for a 10-year period. The VI–86 rate schedule would be available only for that portion of a DSI's load used for primary aluminum production.

BPA states that the VI–86 rate schedule includes a series of adjustments that are designed to protect BPA's fiscal position by preserving the aluminum smelter market. In the second year, the lower pivot point [3] would be lowered from 61 cents to 59 cents, and the rate floor would be raised by 1 mill per kWh. Further the rate schedule would be adjusted on a yearly basis to account for inflation and production cost changes. BPA states that every time the IP standard rate increases, so does the price of electricity paid by aluminum smelters under the VI–86 rate schedule.

Two long-term adjustments intended to protect BPA's financial position are also included in the VI–86 rate schedule. First, after the first five years of experience, the "Historical Aluminum Price Adjustment" would be computed, and this average price may boost the price of electricity above the discount rate even if the price of aluminum is below 72 cents a pound. Second, BPA would have the unilateral right to terminate service under the VI–86 rate schedule after five years if the rate is not achieving the goals for which it was designed.

BPA states that the VI–86 rate schedule is projected to recover more revenue over time than its IP standard rate, while stabilizing the load allocated to the aluminum smelter industry over a widely fluctuating range of aluminum prices. Therefore, BPA contends, its ability to meet its revenue requirement, including its obligation to the U.S. Treasury, would improve. However, if any revenue deficiencies are projected to occur within the DSI class during future rate periods, BPA states that it would increase its other rates to ensure that its repayment obligations are met. Conversely, any extra revenues recovered under the VI–86 rate schedule would be used to benefit BPA's other customers.

Notice of the filing was published in the **Federal Register**,[4] with comments due on or before June 30, 1986. Timely motions to intervene were filed by Pacific Power & Light Company, a group of DSIs,[5] the Western Public Agencies Group, the Association of Public Agency Customers, the Public Power Council, Puget Sound Power & Light Company, and Columbia Falls Aluminum Company (CFAC). Portland General Electric Company filed an untimely motion to intervene. The Washington, Utilities and Transportation Commission filed a timely notice of intervention. None of

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[1] 16 U.S.C. 839e(a)(2) and 839e(i).

[2] 18 C.F.R. 300.20 and 300.21.

[3] The pivot points are points in BPA's rate schedule IP–85 at which the price of electricity would change in response to changes in the market price for aluminum.

[4] 51 FR 23,137 (1986).

[5] Aluminum Company of America, Columbia Falls Aluminum Company, Commonwealth Aluminum Corporation, Georgia-Pacific Corporation, Intalco Aluminum Corporation, Kaiser Aluminum & Chemical Corporation, Oregon Metallurgical Corporation, Pacific Carbide & Alloys Company, Pennwalt Corporation, and Reynolds Metals Company.

these entities raised any objections to BPA filing, except CFAC.

CFAC supports the VI–86 rate schedule. However, it objects to the August 1, 1986, effective date requested by BPA, requesting an effective date of September 1, 1986, instead. CFAC states that an August 1 effective date would result in payment of a higher rate during August than would otherwise apply. This is because the presently effective rate varies seasonably, and the rate in August under that rate schedule would be lower than the rate for August under the proposed VI–86 rate schedule. According to CFAC, this would undermine the goals of the VI–86 rate schedule. CFAC characterizes these goals as (1) discouraging aluminum smelter closures in the short run and (2) encouraging high rates of operation by the smelters while (3) if possible, recovering on average the same revenue as under the existing rate schedule. Charging a higher rate during August under the VI–86 rate schedule than would be charged under the existing rate schedule works against these goals, CFAC alleges. Finally, a September 1 effective date would be more consistent with the seasonable differentiation of the IP standard rate, "since the higher winter component of that rate (which the variable rate is designed to supplant) will not become an issue" until September, CFAC argues.

BPA filed a timely answer in which it does not oppose the motions to intervene. It points out that except for CFAC's request for a different effective date, no issues are raised in the motions to intervene and notice of intervention. Given this lack of opposition, interim approval is not necessary, according to BPA. It asks that the Commission issue an order by August 1, 1986, granting final approval. Accordingly, BPA also asks for a waiver of 18 CFR 300.10(a)(3)(iii), which requires BPA rate schedules for which interim approval is not requested to be filed at least 180 days before the proposed effective date.

BPA argues that the effective date should not be delayed, as CFAC asks. BPA states that a "fundamental principle" of the VI–86 rate schedule is that as the rate varies with the price of aluminum, the aluminum smelters using the rate will at times pay more than the standard rate and at other times will pay less. BPA points out that the VI–86 rate schedule is proposed to last up to ten years, and that a fundamental goal is to increase BPA's revenues over the revenues BPA would receive under the standard rate.[6] If a September 1 rather than August 1 effective date is adopted, BPA would allegedly lose $7,000,000. According to BPA, although one goal of the new rate is to discourage smelter closures in the short term, the "short term" is one to three years.[7] In response to CFAC's argument that September 1 would be more consistent with the seasonal differentiation of the IP standard rate, BPA states that the VI–86 rate schedule is not designed to supplant the higher winter component of the existing rate schedule, as CFAC argues. Finally, BPA contends that the level of the VI–86 rate will be what it is in August because BPA adopted CFAC's suggestion that the VI–86 rate for any given month be based on the average aluminum price three months before.

On July 18, 1986, CFAC filed a motion for leave to file a reply to BPA's answer. However, the Commission's rules do not allow such an answer, unless otherwise ordered, and CFAC has not shown why its motion should be granted.[8] Therefore, we shall deny the motion.

Discussion

Under Rule 214 of the Commission's Rules of practice and procedure (18 CFR 385.214), the timely, unopposed motions to intervene serve to make the various movants parties to this proceeding, and the timely notice of intervention serves to make the Washington Utilities and Transportation Commission a party to this proceeding. We find that good cause exists to grant Portland General Electric Company's untimely motion to intervene, given its stated interest, the relatively short delay in seeking to intervene, and the fact that granting the motion will result in no undue prejudice or delay in this proceeding.

Due to the complexities of the filing, we are unable to make a determination at this time with respect to final approval. Regardless of the fact that no intervenor objects to the VI–86 rate schedule, this Commission must determine for itself whether the rate is sufficient to assure repayment of the Federal investment in the Columbia River Power System and whether it is based upon BPA's total system costs, as required by section 7(a) of the NPA. We are unable at this time to make a determination as to whether the VI–86 rate schedule should be approved on a final basis. We shall request additional information from BPA and solicit further public comments before making such a determination. Therefore, our review has been limited to consideration on an interim basis, which is necessarily a more limited review process than the review of rates for final approval, particularly in view of the short review period in this case. Based on this limited analysis, BPA's filing appears to comply with the revenue recovery objectives of the NPA and will be approved on an interim basis under 18 CFR 300.20.[9] It is not necessary to grant or deny BPA's request for a waiver of 18 CFR 300.10(a)(3)(iii), since we are not granting final approval at this time.

With regard to the CFAC's request that the effective date be delayed until September 1, 1986, we agree with BPA that this delay is not justified in view of the purpose of the VI–86 rate schedule. The purpose of VI–86 rate schedule is not simply to give the aluminum industry a more favorable rate. The VI–86 rate schedule is designed to better meet the NPA goal of ensuring repayment of the Federal investment by allowing BPA to charge higher rates when the price of aluminum is up as well as lower rates when the price of aluminum is down. As BPA points out, the ROD reveals that the VI–86 rate schedule is designed to recover *more* revenue, if possible, than under the previous rate. Moreover, BPA has shown good reason to make the new rate effective as of August 1, 1986. It points out that two smelters have stated that they need to complete contract negotiations with suppliers as soon as possible, while others have stated that they need to know if the VI–86 rate schedule is in effect as soon as possible in order to make decisions regarding future operations. No party other than CFAC has asked for a delay in the effective date. Moreover, as we recognized in our order granting a waiver to allow BPA to file the VI–86 rate schedule less than 60 days before the proposed effective date, waivers may be justified to assist BPA in light of the sensitivity of the Pacific Northwest's industrial economy and the importance of the aluminum industry in that region. Therefore, we shall grant interim approval of the VI–86 rate schedule, effective August 1, 1986.

BPA asks that the new rate be approved for an approximately ten year period, the amount of time BPA states is necessary to maintain the aluminum

[6] BPA states that although CFAC characterizes one of the goals of the new rate as being recovery of revenues *equal* to those that would be collected under the standard rate, the goal in fact is to *increase* BPA's revenues. BPA Record of Decision (ROD) at 29; Variable Industrial Power Rate Study (Study) at 7.

[7] BPA cites the study at 37–38, 49–52, and the ROD at 101–103.

[8] 18 CFR 385.213(a)(2).

[9] *Bonneville Power Administration*, 35 FERC ¶ 61,010, 61,019 (1986).

smelter load during the period of BPA's power surplus. We shall reserve a decision on this question and grant interim approval of BPA's proposed rate only until such time as we decide whether to approve the VI–86 rate schedule on a final basis.

Finally, we noted that BPA's request for approval of its VI–86 rate is predicated upon its concerns that it may recover insufficient revenues to meet the criteria set forth in the NPA. We encourage BPA to review its financial situation and to develop and file new power and transmission rates, if appropriate.

The Commission orders:

(A) Portland General Electric Company's untimely motion to intervene is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) CFAC's motion for leave to file a reply to BPA's answer is hereby denied.

(C) BPA's Variable Industrial Power (VI–86) rate is hereby permitted to be placed into effect on an interim basis, effective August 1, 1986, subject to refund with interest as set forth in section 300.20(c) of the Commission's regulations, pending final confirmation and approval or disapproval.

(D) Within forty-five (45) days of the issuance of a deficiency letter requiring BPA to submit further information, BPA shall file the required information. Within thirty (30) days of the date after BPA submits this information, all parties who wish to do so shall file additional comments regarding final confirmation and approval or disapproval of the VI–86 rate. All parties may file cross-comments within twenty (20) days thereafter. The Commission will consider all timely comments in determining the ultimate disposition of BPA's rate proposal.

(E) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–17570 Filed 8–4–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86–603–000, et al.]

Electric Rate and Corporate Regulation Filings; Niagara Mohawk Power Corp., et al.

July 29, 1986.

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corporation

[Docket No. ER86–603–000]

Take notice that on July 21, 1986, Niagara Mohawk Power Corporation (Niagara), tendered for filing as a rate schedule, an agreement between Niagara and Orange and Rockland Utilities Inc. (Orange and Rockland) dated June 5, 1986.

Niagara presently has on file an agreement with Orange and Rockland dated February 14, 1975, last amended by letter dated May 15, 1985. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 89. This new agreement is being transmitted as a supplement to the existing agreement.

This supplement revises the transmission rate for transmitting Fitzpatrick power and energy from the Power Authority of the State of New York to Orange and Rockland as provided for in the terms of the original agreement. Niagara requests waiver of the Commission's prior notice requirements in order to allow said agreement to become effective as of September 1, 1986.

Copies of this filing were served upon Orange and Rockland Utilities Inc. of Pearl River, New York and Public Service Commission of Albany, New York.

Comment date: August 11, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Western Massachusetts Electric Company, et al.

[Docket No. ER86–378–000]

Take notice that on July 22, 1986, Western Massachusetts Electric Company (WMECO) tendered for filing additional information to support the calculation in the proposed rate schedule under a Distribution Line Agreement dated February 4, 1985 between (1) WMECO and (2) Chicopee Hydroelectric Limited Partnership (CHLP) (Distribution Agreement).

The calculation in the proposed rate schedule has a number of components which require definition in order for the basis of the calculation to be supported. Pursuant to FERC's request, the definition for one of the components which was omitted is now included.

WMECO renews its request that the Commission waive its standard notice period and permit the Distribution Agreement to become effective as of February 4, 1985.

WMECO states that a copy of this filing has been mailed to CHLP, Portland, Maine.

WMECO further states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: August 11, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Central Vermont Public Service Corporation

[Docket No. ER86–542–000]

Take notice that on June 25, 1986, Central Vermont Public Service Corporation ("CVPS") tendered for filing a rate schedule pertaining to a sales agreement for transmission service to the Vermont Electric Generation and Transmission Cooperative, Inc. ("VEGTC"); actual cost report for 1985 service year billings.

CVPS states that the rate schedule provides a revenue comparison setting forth the forecast and actual revenues for 1985, and cost report computing the forecast and the actual cost for 1985.

The annual charges to VEGTC are based on estimated data which are subject to a reconciliation, after a year is over, based on actual data found in the companies FERC Form No. 1. The estimated data showed that CVPS's actual billings fell short of the actual costs on an annual basis by $10,418, of which 5/12 is subject to reconciliation. On this basis, payment has been stipulated in the sales agreement of an interest amount of $155.00.

Comment date: August 14, 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. 86–17567 Filed 8–4–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-175-004; RP85-175-005 and RP85-175-006]

Pipeline Rates Late Interventions; Settlements; Order No. 436; Transwestern Pipeline Co.; Order Allowing Late Interventions and Establishing Procedures for Submission of Other Petitions to Intervene Out of Time

Issued July 23, 1986.

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

In this order we address matters concerning petitions to intervene out of time in this proceeding. This case originated with the filing of Transwestern Pipeline Company (Transwestern), on July 20, 1985, for a rate increase under section 4 of the Natural Gas Act. On January 16, 1986, Transwestern filed an offer of settlement which proposed to resolve all issues in the proceeding, and in addition to institute transportation rates pursuant to the Commission's Order No. 436.[1] On March 24, 1986, the presiding administrative law judge issued an order certifying the proposed settlement to the Commission.[2] Subsequently, by an order issued on May 27, 1986, the Commission granted late motions to intervene which had been filed by Exxon Corporation (Exxon), Pennzoil Company and Pennzoil Producing Company (Pennzoil), and Mobil Oil Corporation, Mobil Producing Texas & New Mexico, Inc., and the Superior Oil Company (collectively Mobil).[3] The Commission's order set a schedule for those late intervenors' comments, and reply comments thereto.[4]

In this order we will allow two additional petitions to intervene out-of-time, and establish a procedure to deal with other petitions to intervene out-of-time.

Barbour's Petition

On June 10, 1986, Barbour Energy Corporation (Barbour) filed with the Commission a motion requesting that the Commission reconsider the order that the presiding administrative law judge issued in this proceeding on March 24, 1986, denying Barbour's motion for late intervention in this proceeding.[5]

Barbour notes that the Commission granted three other motions for reconsideration of the judge's order denying late intervention. Barbour further notes that the three other movants filed their motions for late intervention after Barbour filed its similar motion.

Barbour states that it requests party status only, and does not wish to file any additional comments on Transwestern's proposed settlement agreement which is at issue in this proceeding. (Barbour filed comments in opposition to the proposed settlement on January 29, 1986.) Barbour further asserts that granting its motion will in no way further delay the proceeding.

As Barbour correctly notes, the Commission granted the other three motions for late intervention because proper notice had not been given of the fact that the proposed settlement contained provisions under the Commission's Order No. 436. The Commission's concern in treating the issue of late intervention in settlements involving Order No. 436 has been that interested parties be allowed to comment on the proposed settlements' treatment of Order No. 436 issues. The three motions for late intervention which the Commission allowed here were filed on the basis of the movants' concerns with Order No. 436 issues raised by the proposed settlement.

Barbour's motion for late intervention, filed on January 17, 1986, made no mention of Order No. 436. After the judge rejected Barbour's petition, Barbour failed to take timely action to request Commission reconsideration of the judge's denial of its motion. This is in contrast to the other three movants, who filed protests of the judge's denial of their petitions for late intervention within 15 days of his ruling.[6]

Barbour's comments in opposition to the proposed settlement, filed on January 29, 1986, contain seven specific arguments, one of which is based on Order No. 436. Barbour's comment number 4 alleges that Transwestern's settlement fails to comply with all of the requirements of Order No. 436.

We have stated that we "would view with disfavor any proposed settlements dealing with Order No. 436 issues which did not allow all interested parties an adequate opportunity to have their positions considered."[7] We will therefore allow Barbour late intervention, limited to consideration of its comment number 4 on the settlement, filed on January 29, 1986.

To the extent that Barbour's motion for reconsideration is deemed to go beyond its comment number 4 pertaining to Order No. 436, we conclude that it is without merit, and affirm the judge's denial of Barbour's motion for late intervention as failing to satisfy the criteria of the Commission's Rule 214(d), 18 CFR 214(d), for reviewing a late motion to intervene.

Tenneco's Petition

On May 20, 1986, Tenneco Oil Company (Tenneco) filed a motion for permission to intervene late in these proceedings. The orignial filings in this case did not involve Order No. 436. Tenneco states that it was unaware until recently that the contents of the settlement concerned Order No. 436. Tenneco alleges that it desires transporation of its gas pursuant to the provisions of Order No. 436, and that it therefore has an economic interest which will be directly affected by the outcome of this proceeding.

The rationale, which we have described above, for accepting the previous petitions for late intervention in this proceeding, applies equally to Tenneco's petition. We will therefore grant Tenneco's petition.

Procedures to Deal with Other Petitions for Late Intervention

Other persons who have heretofore been unaware of the Order No. 436 provisions of this settlement due ot the insufficient notice given with regard thereto may seek to intervene in this proceeding. In order to avoid the delays which could result if we were to deal with such petitions for late intervention as they come before us, we will adopt the following procedures. First, we shall direct the Secretary to have this order published promptly in the Federal Register. This will give the notice that the rates, terms, and conditions under which Transwestern will operate as an open access transporter pursuant to Order No. 436 will be determined in this case. Second, we shall require any person seeking to intervene to do so within 15 days of the date of publication of this order in the Federal Register. Third, we shall require all persons seeking to intervene to file, if they wish,

[1] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42408 (Oct. 18, 1985) (Order No. 436), *Modified*, 50 FR 52217 (Dec. 23, 1985) (Order No. 436-A), *pet. for review filed sub nom.* Associated Gas Distributors v. FERC, No. 85-1811 (D.C. Cir., filed Dec. 12, 1985).

[2] 34 FERC ¶ 63114 (1986).

[3] 35 FERC ¶ 61323 (1986).

[4] Reply comments were filed on June 16, 1986, pursuant to the schedule.

[5] 34 FERC ¶ 63133 (1986).

[6] The judge issued his ruling on March 24, 1986. The three movants filed for reconsideration on April 8, 1986. Barbour entered a similar filing with the judge on April 29, 1986. (On April 24, 1986, the Commission had issued a notice in which it stated that it, and not the judge, had jurisdiction over these proceedings as of March 24, 1986, when the judge certified the settlement to the Commission.)

[7] United Gas Pipe Line Co., Docket Nos. RP85-209-003, *et al.*, 35 FERC ¶ 61.179 (May 7, 1986).

comments on the settlement within 15 days of the date of publication of this order in the **Federal Register**. Reply comments may be filed 10 days later.

The Commission Orders

(A) Barbour's late motion to intervene is granted subject to the rules and regulations of the Commission; provided, however, that Barbour's participation shall be limited to matters affecting asserted rights and interests pertaining to Commission Order No. 436 set forth in its comments on the settlement in this proceeding; and provided, further, that the admission of such intervenor shall not be construed as recognition that it might be aggrieved by any order entered in this proceeding.

(B) Tenneco's late motion to intervene is granted subject to the rules and regulations of the Commission, provided that Tenneco's admission as intervenor shall not be construed as recognition that it might be aggrieved by any order entered in this proceeding.

(C) Any other person seeking to intervene shall file a petition to intervene within 15 days of the date of publication of this order in the **Federal Register**.

(D) Tenneco, as well as any other person that has sought to interevene in this proceeding and has not filed comments on the Order No. 436 provisions in the settlement, may file comments within 15 days of the date of publication of this order in the **Federal Register**. Any person may file a reply to these comments 10 days later.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-17639 Filed 8-4-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000]

Natural Gas Policy Act; Pipelines After Partial Wellhead Decontrol, (ANR Pipeline Co.; Order Granting Clarification

Issued: August 1, 1986.

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

On June 10, 1986, ANR Pipeline Company filed a request for clarification of Order No. 436. ANR requests clarification on (1) the continuing effect of the contract reduction/conversion requirement in § 284.10 after a pipeline withdraws from the Order No. 436 program, and (2) whether grandfathered transportation services under §§ 284.105 and 284.223(g)(1) may continue after a pipeline withdraws from Order No. 436. This order grants their request.

Specifically, ANR states that pipelines that participate in the Order No. 436 program and are subject to § 284.10 must permit existing firm sales customers the option of reducing or converting up to 100 percent of their firm sales entitlements. ANR questions the continuing effect of this provision if a pipeline withdraws from that program. As the Commission made clear in Order No. 436, pipelines that originally elect to participate in this program may later withdraw from the program and instead use the standard filing procedures under section 7 of the Natural Gas Act. 50 FR 42408, at 42434 (1985). ANR states that if a pipeline decides to withdraw from the Order No. 436 program, then a pipeline should no longer be subject to the contract reduction/conversion requirement in§ 284.10. According to ANR, this result must follow if the Commission intends to give pipelines the option of using either the standard section 7 procedures or the Order No. 436 procedures. However, with respect to contract reductions/conversions that took effect during the period the pipeline operated under Order No. 436, ANR concedes those reductions and converions would not be affected by the pipeline's withdrawal, but would remain in effect. Accordingly, no reductions or conversions would be permitted after a pipeline withdrew from Order No. 436, except those that took effect during the pipeline's election to use Order No. 436.

We agree that § 284.10 does not apply once a pipeline withdraws from the Order No. 436 program. The provisions of § 284.10 only apply to pipelines that transport gas under §§ 284.102 or 284.243 or under a blanket certificate issued under § 284.221. Thus, once a pipeline withdraws from the Order No. 436 program, § 284.10 no longer applies. We also agree that any reductions and conversions that were exercised during the period the pipeline participated in the program must be honored, although no further reductions or conversions are required. However, we reiterate that in order for a pipeline to withdraw from the program, it must withdraw in a manner that is consistent with the provisions of Order No. 436.[1]

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-17569 Filed 8-4-86; 8:45 am]

BILLING CODE 6717-01-M

[1] Briefly, withdrawal from transportation under Subpart G is subject to abandonment authorization and withdrawal from transportation under Subparts B and C section 311 service) must be on a non-discriminatory basis. 50 FR at 42434 (1986).

Office of Hearings and Appeals

Cases Filed; Week of June 27 Through July 4, 1986

Correction

In the document appearing on page 27452 in the issue of Thursday, July 31, 1986, the file line was omitted and should have appeared as follows:

[FR Doc. 86-17219 Filed 7-30-86; 8:45 am]

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51631; FRL-3048-6]

Certain Chemicals Premanufacture Notices; E.I. du Pont de Nemours and Co., Inc., et al.

Correction

In FR Doc. 86-15871 beginning on page 26055 in the issue of Friday, July 18, 1986, make the following corrections:

1. On page 26055, in the second column, in premanufacture notice P 86-1225, fourth line, "ammonium" was misspelled;

2. On page 26056, in the first column, in premanufacture notice P 86-1231, fifth line, insert "Confidential" after "Prod. range:";

3. On the same page, in the same column, in premanufacture notice P 86-1234, tenth line, "3 hrs/da" should read "8 hrs/da";

4. On the same page, in the second column, in premanufacture notice P 86-1236, fourth line, "S" should read "G"; and

5. On the same page, in the third column, in premanufacture notice P 86-1243, tenth line, "120 hrs/yr" should read "10 hrs/yr".

BILLING CODE 1505-01-M

[FRL-3060-3]

Sale and Use of Aftermarket Catalytic Converters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of exercise of enforcement discretion.

SUMMARY: This action announces an interim enforcement policy regarding the sale and use of repalcement catalytic converters ("converters") for motor vehicles. The basis for this interim enforcement policy is described elsewhere in today's Federal Register under the heading "Sale and Use of Aftermarket Catalytic Converters,

Notice of Proposed Enforcement Policy." From the date of publication of this notice, EPA will exercise its enforcement discretion not to prosecute any installer, seller, or manufacturer of repalcement converters that voluntarily complies with the guidelines proposed in the Notice of Proposed Enforcement Policy, until a final decision is made on the Proposed Enforcement Policy.

ADDRESS: Any comments and information regarding this notice may be submitted to the docket for the Proposed Enforcement Policy, Docket No. A–84–31, located at the Environmental Protection Agency, Central Docket Section, West Tower Lobby, Gallery I, LF.131, 401 M Street, SW., Washington, DC 20460. The docket may be inspected weekdays between 8:00 a.m. and 4:00 p.m. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Janet Murphy or Steve Albrink (202) 382–2640, Field Operations and Support Division (EN.397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: As discussed more fully in the Notice of Proposed Enforcement Policy published elsewhere in today's **Federal Register**, the installation, sale or manufacture of a converter which is ineffective or less effective than the new original equipment (OE) converter could constitute unlawful tampering, or causing of tampering, under section 203(a)(3) of the Clean Air Act. Although permitting only new OE converters to be used as repalcements would ensure full effectiveness and would not violate the tampering prohibitions, these parts are generally quite expensive and some State and local vehicle Inspection/Maintenance (I/M) program officials are reluctant to require converter replacement for missing or damaged converters because of this expense. The proposed enforcement policy described elsewhere in today's **Federal Register** is intended to encourage the development of inexpensive, multiple-application replacement converters, and ensure the effectiveness of these products by allowing their use as repalcements in certain circumstances, provided they meet specified criteria EPA has requested comments on that proposed policy.

EPA hereby gives notice that the enforcement policy guidelines and performance criteria proposed elsewhere in today's **Federal Register**, as Appendix IX to 40 CFR Part 85, will be, from the date of publication of this notice and until a final decision is made on the proposed enforcement policy, the basis for the exercise of EPA's enforcement discretion with regard to the enforcement of the tampering prohibition against sellers, installers and manufacturers of aftermarket catalytic converters. Specifically, although the final policy may be issued with substantial modifications, or not at all, depending on the comments received, no installer, seller, or manufacturer voluntarily complying with the interim guidelines will be prosecuted for tampering as a result of following the proposed guidelines during the interim period before the final policy is published or the proposal is withdrawn. However, the installation or sale of a converter not complying with the interim guidlines, and which is not a new OE converter or its equivalent (as defined in the proposed policy) or a "certified" converter, may be considered tampering or the causing thereof.

This notice of the exercise of enforcement discretion is intended to supersede EPA's Mobile Source Memorandum 1A only with regard to new or used aftermarket converters.

Additional Information

Under Executive Order 12291, EPA must judge whether an action is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This action is not major because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestics or export markets. In fact, this interim enforicement polciy may allow additional businesses to enter the catalyst replacement market to produce, market, or install acceptable quality replacement catalysts. It may also lower cost to consumers and increase competition since vehicle manufacturers' dealerships will no longer be the only suppliers of acceptable catalysts.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB and any EPA response to such comments are available for public inspection in the docket.

Dated: July 25, 1986.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86–17556 Filed 8–4–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–769–DR]

Major Disaster and Related Determinations; Washington

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Washington (FEMA–769–DR), dated July 25, 1986, and related determinations.

DATED: July 25, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3616.

Notice: Notice is hereby given that, in a letter of July 25, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Washington resulting from a severe storm on May 20, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Washington.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Richard A. Buck of the Federal Emergency Management Agency to act as the Federal

Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Washington to have been affected adversely by this declared major disaster and is designated eligible as follows:

The City of Spokane for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director.

[FR Doc. 86-17526 Filed 8-4-86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-495]

Empire of America Federal Savings Bank Buffalo, NY; Final Action Approval of Conversion Application

Dated: July 29, 1986.

Notice is hereby given that on July 15, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Empire of America Federal Savings Bank, Buffalo, New York, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisor Agent of the Federal Home Loan Bank of New York, One World Trade Center, Suite 8830, New York, New York 10048.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86-17577 Filed 8-4-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Agreement No. 224-004067-002]

Oakland Terminal Agreement; Erratum

The **Federal Register** Notice of July 24, 1986 (Vol. 51, No. 142, page 26598) incorrectly identified the above named agreement as Agreement No. 224-004076-002. The agreement should have been identified as Agreement No. 224-004067-002.

By Order of the Federal Maritime Commission.

Dated: July 31, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-17554 Filed 8-4-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First NH Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that a requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 27, 1986.

A. **Federal Reserve Bank of Boston.** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusertts 02106:

1. *First NH Banks, Inc.;* Manchester, New Hampshire; to acquire 100 percent of the voting shares of First NH Bank of Maine, Portland, Maine a *de novo* bank.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Alabama Bancshares, Inc.,* Montgomery Alabama; to acquire 100 percent of the voting shares of Enterprise Banking Company, Enterprise, Alabama.

Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Avoca Financial Services, Inc.,* Council bluffs, Iowa; to become a bank holding company by acquiring over 94 percent of the voting shares of Citizens Savings Bank, Avoca, Iowa. Comments on this application must be received by August 25, 1986.

2. *Lowden Bancshares, Inc.,* Lowden, Iowa; to become a bank holding company by acquiring over 93 percent of the voting shares of American Trust and Savings Bank, Lowden, Iowa. Comments on this application must be received by August 25, 1986.

D. **Federal Reserve Bank of St. Louis** (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *North Arkansas Bancshares, Inc.,* Jonesboro, Arkansas; to become a bank holding company by acquiring 94.6 percent of the voting shares of The Bank of Rector, Rector, Arkansas, and 100 percent of the voting shares of Searcy County Bank, Marshall, Arkansas, formerly The Citizen Bank, Marshall, Arkansas. Comments on this application must be received by August 25, 1986.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lawson Financial Corporation,* Kansas City, Missouri; to become a bank holding company by acquiring 97 percent of the voting shares of Lawson Bank, Lawson, Missouri.

2. *Northland Bancshares, Inc.,* Kansas City, Missouri; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Platte County, Kansas City, Missouri. Comments on this application must be received by August 19, 1986.

Board of Governors of the Federal Reserve System, July 30, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-17522 Filed 8-4-86; 8:45 am]

BILLING CODE 6210-01-M

Southborough Holdings, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies,

or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate imnspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 1986.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Fransicso, California 94105:

1. *Southborough Holdings, Inc.*, Vancouver, British Columbia, Canada, Pacific National Financial Corporation, Vancouver, British Columbia, Canada, and Amercian National Corporation, San Francisco, California; have applied to become bank holding companies by acquiring Foothill Bank, Mountain View, California.

In connection with this application, Applicants have also applied to engage *de nova* through their subsidiary, American National Leasing Corporation, San Francisco, California, in full-payout financial leasing in the United States pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–17523 Filed 8–4–86; 8:45 am]

BILLING CODE 6210-01-M

SunTrust Banks, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, not later than August 28, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia; to engage *de novo* through its subsidiary, SunTrust Securities, Inc., Atlanta, Georgia, in brokering securities issued by mutual funds, unit investment trusts, or other investment companies; these services will be restricted to buying and selling securities solely as agent for the account of customers and does not include securities or dealing or investment advice or research services pursuant to § 225.25(b)(15) of the Board's Regulation Y; and underwriting and dealing in government obligations and money market instruments; underwriting and dealing in obligations of states and their political subdivisions and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24, and 335 including bankers acceptances and certificates of deposit pursuant to § 225.25(b)(16) of the Board's Regulation Y. These activities will be conducted in Orlando, Florida and Atlanta, Georgia.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Independent Bancorp, Inc.*, Channelview, Texas; to engage *de novo* through its subsidiary, MultiBank Mortgage Corporation of Texas, Houston, Texas, in the activity of making, acquiring and/or servicing loans for itself or the account of others of the type made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. *PSB Financial Corporation*, Many, Louisiana; to engage *de novo* through its subsidiary, PSB Mortgage Corporation, Many, Louisiana, in the activity of originating, acquiring; selling and servicing mortgage loans pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 30, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–17524 Filed 8–4–86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions, and Delegations of Authority; National Institutes of Health

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 51 FR 5804, February 18, 1986) is amended to reflect the following changes in the Office of the Director, NIH: (1) Establish the Office of Disease Prevention (HNA2); (2) establish the Division of Disease Prevention (HNA22) within the Office of Disease Prevention (HNA2); and (3) transfer the Office of Medical Applications of Research (HNA9) to the newly established Office of Disease

Prevention (HNA2) and change its Standard Administrative Code to (HNA23). These changes centralize the leadership and coordination of biomedical programs that seek to improve the Nation's health through research, research training, and the exchange of knowledge as these activities relate to disease prevention, effects of nutrition on health and progression of disease, and medical applications of biomedical research.

Section HN–B, Organization and Functions is amended as follows:

(1) Under the heading *Office of the Director (HNA)*, delete the statement for the Office of Medical Applications of Research (HNA9) in its entirety.

(2) After the statement for the Office of Communications (HNA8), insert the following:

Office of Disease Prevention (HNA2). Coordinates the activities of disease prevention, nutrition, and medical applications of research, and advises the Director, NIH, and senior staff on the following: (a) Research related to disease prevention, and promotion of disease prevention research; (b) all aspects of nutrition research relating to the mission of NIH, including international facets of nutrition; and (c) medical applications of research, including drugs, procedures, devices, and other technology developed from basic biomedical research at NIH.

Division of Disease Prevention (HNA22). (1) Advises the Associate Director for Disease Prevention and provides guidance to the research institutes on research related to disease prevention; (2) coordinates and facilitates the systematic identification of research activities pertinent to all aspects of disease prevention, including: (a) Identification of risk factors for disease; (b) risk assessment, identification, and development of biologic, environmental, and behavioral interventions to prevent disease occurrence or progression of presymptomatic disease; and (c) the conduct of field trials and demonstrations to assess interventions and encourage their adoption, if warranted; (3) identifies, coordinates, and encourages fundamental research aimed at elucidating the chain of causation of acute and chronic diseases; (4) coordinates and facilitates clinically relevant NIH-sponsored research bearing on disease prevention, including interventions to prevent the progression of detectable but asymptomatic disease; (5) promotes the coordinating linkage for research conducted in the research institutes on biobehavioral modification toward prevention of disease; (6) coordinates with the Office of Medical Applications of Research to promote the effective transfer of identified safe and efficacious preventive interventions to the health care community and the public; (7) works with the research institutes to initiate and develop RFAs, PAs, and RFPs to enhance disease prevention program development; and sponsors, singly or in combination with other organizations, workshops and conferences on disease prevention; (8) provides a link between the disease prevention and health promotion activities of the research institutes of the NIH, the Office of the Assistant Secretary for Health, and the Secretary, DHHS; (9) monitors the effectiveness and progress of disease prevention and health promotion activities of the NIH; (10) is responsible for reporting expenditures and personnel involved in prevention activity at NIH; (11) coordinates the nutrition research and training activities of the research institutes; (12) coordinates the Departmental Research Initiative in Nutrition that includes developing the 5-Year Plan of Nutrition Research and Training; (13) maintains the Human Nutrition Research and Information Management (HNRIM) system; (14) develops the *Annual Report of the NIH Program in Biomedical and Behavioral Nutrition Research and Training*; and (15) develops and maintains effective liaison with other departments and agencies that have nutrition mechanisms.

Office of Medical Applications of Research (HNA23). (1) Advises the Associate Director for Disease Prevention and provides guidance to the research institutes on medical applications of research; (2) coordinates, reviews, and facilitates the systematic identification and evaluation of clinically relevant NIH research program information; (3) promotes the effective transfer of this information to the health care community and, through the Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment (NCHSRHCTA), to those agencies requiring such information; (4) provides a link between technology assessment activities of the research institutes of the NIH and the NCHSRHCTA; and (5) monitors the effectiveness and progress of the assessment and transfer activities of the NIH.

Dated: June 23, 1986.

Otis M. Bowen,

Secretary.

[FR Doc. 86–17542 Filed 8–4–86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6694-A]

Alaska Native Claims Selection; Afognak Native 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 secs. 14(a) and 22(j) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), 1621(j), will be issued to Afognak Native Corporation for the Native village of Port Lions for approximately 8 acres. The lands involved are in the vicinity of Port Lions, Alaska.

Seward Meridian, Alaska

T. 26 S., R. 24 W. (Surveyed)
Sec. 1, those lands within Sec. 3(e) application AA–12830.
Containing approximately 8 acres.

A notice of the decision will be published once a week for four (4) consecutive weeks in the KODIAK DAILY MIRROR. 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 September 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.

Steven L. Willis,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86–17534 Filed 8–4–86; 8:45 am]

BILLING CODE 4310-JA-M

[NV-930-06-4410-10]

Resource Management Plans; Shoshone-Eureka Resource Area, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent (NOI) to prepare an amendment to the Shoshone-Eureka Resource Management Plan (RMP) and an invitation to participate in identification of issues and review of the preliminary planning criteria.

SUMMARY: This notice describes the action to be analyzed for the RMP amendment, the geographic area that would be affected, the preliminary issue and planning criteria, the disciplines to be represented and used to prepare the plan, the kind and extent of public participation activities, and the BLM offices to contact for further information. Also this notice is an invitation to participate in the identification of issues and review the planning criteria.

DATE: Written comments are due by September 15, 1986.

ADDRESS: Written comments on the issue(s) and proposed planning criteria are due to the Battle Mountain District, N. 2nd and Scott Streets, P.O. Box 1420, Battle Mountain, Nevada 89820.

FOR FURTHER INFORMATION CONTACT: Neil D. Talbot, Shoshone-Eureka Area Manager, N. 2nd and Scott Streets, P.O. Box 1420, Battle Mountain, Nevada 89820, (702) 635–5181.

SUPPLEMENTARY INFORMATION:

Description of the Proposed Planning Action

Pursuant to 43 CFR 1610.5–5, the Bureau of Land Management's Battle Mountain District Office is in the process of initiating an amendment to the comprehensive land use plan for the Shoshone-Eureka Resource Area. The Resource Management Plan amendment is scheduled for completion in September of 1987. The resource management plan amendment will be designed to direct programs and management practices with regard to livestock grazing on forty-eight allotments through recategorization of part of these allotments. In order to determine the impacts of the proposed action, an Environmental Impact Statement will be prepared in conformance with the National Environmental Policy Act of 1969. Reasonable alternatives will be analyzed in the statement, including a no action alternative to assess the consequences of continuing present resource uses and management.

The Geographic Area Covered by the Resource Management Plan Amendment

The Shoshone-Eureka Resource Area contains approximately 4,399,000 acres of public land located in north-central Nevada. It contains the towns of Austin, Eureka, and Battle Mountain. The area includes most of Lander and Eureka counties and a portion of Nye County.

General Types of Issues Anticipated and Preliminary Planning Criteria

The major issue to be addressed for the plan amendment will be the management of livestock use and impacts on wildlife habitat from livestock grazing on a high percentage of the Shoshone-Eureka Resource Area currently managed as Maintain and Custodial Category Allotments. Other issues may be identified through public participation.

The preliminary planning criteria proposes the use of the best data currently avialable. The proposed criteria for categorization of allotments will be: ecological condition, ecological range site potential, range trend, economic investment potential, social-political controversy or interest, present management, range improvements, resource conflicts, and allotment statistics.

Disciplines Represented on the Planning Team

The planning team will consist of individuals with expertise in the following disciplines: (1) Range management, (2) land use planning, (3) wildlife biology, (4) wild horse management, and (5) watershed management.

Public Participation

Public comment is solicited during this identification of issues, and the development of the criteria to guide the planning process. Upon publication of the draft plan amendment and environmental impact statement there will be a 90 day comment period. The time, dates, and locations of public meetings and other public participation opportunities have yet to be determined. Persons interested in participating in the planning process should submit their name and address for inclusion on the Shoshone-Eureka RMP mailing list to Bureau of Land Management, Battle Mountain District Office, N. 2nd and Scott Streets, P.O. Box 1420, Battle Mountain, Nevada 89820.

Location of Planning Documents

A complete file of the resource management plan document will be maintained at both the Bureau of Land Management, Battle Mountain District Office, N. 2nd and Scott Streets, P.O. Box 1420, Battle Mountain, Nevada 89820 and the Bureau of Land Management's Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

Dated: July 30, 1986.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 86–17533 Filed 8–4–86; 8:45 am]

BILLING CODE 4310-HC-M

[CA-940-06-4212-13; CA 17695]

California; Exchange of Public and Private Lands in Riverside, San Diego, and Lassen Counties and Opening Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and order opening lands acquired in this exchange.

SUMMARY: The purpose of this exchange was to acquire non-Federal lands that have significant multiple-use values, including recreational, wildlife, wilderness, scenic, and endangered species values that far outweigh values found on the Federal lands. The United States also acquired conservation and public access easements. The conservation easement will prevent any subdivision of the land and will protect in perpetuity the predominantly natural, scenic, agricultural, open space, and aesthetic attributes of the land. The public access easement will allow public pedestrian access to and over the property with the right of the public to hunt and fish on the land. The area involved is the longest shoreline of undeveloped private land remaining at Eagle Lake, Lassen County, which is the second largest natural fresh-water lake entirely within California. The public interest was well served through completion of this exchange.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office, (916) 978–4815.

The United States issued an exchange conveyance document to The Trust for Public Land on June 13, 1986, under the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716), for the following described land:

San Bernardino Meridian, California

T. 8 S., R. 1 E.,
Sec. 10, Lots 3 and 4;
Sec. 15, Lots 1 to 5, inclusive, and Lots 7, 8, and 12;
Sec. 16, E½;
Sec. 17, SE¼, E¼;
Sec. 20, NE¼, E½NW¼, and NW¼SE¼;
Sec. 21, NE½, N½SW¼, and SE¼.

Containing 1,610.30 acres of public land in Riverside County.

In exchange for these lands, the United States acquired the following described lands and interests from The Trust for Public Land:

Parcel 1

San Bernardino Meridian, California

T. 18 S., R. 2 E.,
Sec. 19, E½E½;
Sec. 20, W½W½;
Sec. 29, W½W½;
Sec. 30, E½E½.

Containing 640 acres of non-Federal land in San Diego County.

Parcel 2—Conservation and Public Access Easements

Mount Diablo Meridian, California

T. 32 N., R. 11 E.,
Sec. 11, Lots 1, 2, 3, 8, NE¼SE¼, S½SE¼;
Sec. 12, Lots 1, 2, 3, 4, NW¼NW¼, SW¼SE¼, S½SW¼;
Sec. 13, Lots 1, 2, 3, W½NE¼, NW¼, E½SW¼, W½SE¼;
Sec. 14, Lots 3, 4, 5, NE¼NE¼, S½NE¼, NW¼SE¼;
Sec. 24, NW¼NE¼, NE¼NW¼.
T. 32 N., R. 12 E.,
Tracts 39, 40, 42, and 43.

Containing 1,578.91 acres of non-Federal land in Lassen County.

A payment in the amount of $50,000 will be paid to The Trust for Public Land by the United States to equalize values between the non-Federal land and the public land.

At 10 a.m. on September 3, 1986, the lands described under Parcel 1 above shall be open to operation of the public land laws generally, subject to (1) valid existing rights and the requirements of applicable law, and (2) subject to such use as may be made of land in a wilderness study area (sec. 603 of the Act of October 21, 1976, 90 Stat. 2785, 43 U.S.C. 1782). All valid applications received at or prior to 10 a.m. on September 3, 1986, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on September 3, 1986, the non-Federal land described under Parcel 1 shal be open to applications under the United States mining laws and mineral leasing laws, subject to such use as may be made of land in a wilderness study area (sec. 603 of the Act of October 21, 1976, 90 Stat. 2785, 43 U.S.C. 1782).

The lands described under Parcel 2 are in private ownership and, therefore, will not be open to the operation of the public land laws or mining and mineral leasing laws.

Inquiries concerning the land should be addressed to the Bureau of Land Management, Room E–2841, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Dated: July 25, 1986.

Sharon N. Janis,

Chief, Branch of Adjudication and Records.

[FR Doc. 86–17536 Filed 8–4–86; 8:45 am]

BILLING CODE 4310-40-M

[6-00157-ILM 4310-GJ]

Realty Action; Recreation and Public Purpose Sale; Public Land in Jackson County, MS

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—R&PP sale, public lands, Jackson County, Mississippi.

SUMMARY: The following described lands have been examined and are classified as suitable for sale for recreation and public purposes under the Recreation and Public Purposes Act of 1926 (44 Stat. 741), as amended.

St. Stephens Meridian

T. 9 S., R. 6 W.,
Sec. 3 Lot 1.
T. 9 S., R. 6 W.,
Sec. 4 Lot 1.

The described area aggregates approximately 48.92 acres, all in Jackson County, Mississippi.

The City of Pascagoula, Mississippi proposes to use these lands for inclusion into the City's park system. The purpose is to provide the citizens and visitors of Pascagoula with a passive recreation park and to preserve, protect, and perpetuate the natural resources of the lands.

It has been determined that the proposed use in the public's best interest, and is consistent with the policy of the Bureau of Land Management.

The patent will be subject to all existing rights and reservations of record.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws, but not the mineral leasing laws. This segregation will terminate upon the issuance of a patent, or in 18 months from the date of this Notice, or upon publication of a Notice of Termination. Detailed information concerning the sale, including the environmental assessment and land report, is available for review at the Bureau of Land Management office listed below.

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the District Manager, Jackson District Office, P.O. Box 11348, Jackson, Mississippi 39213. Comments will be evaluated by the District Manager, who may vacate or modify this Realty Action. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

For further information, contact: David L. Gay, (601) 960–4405.

Henry Beauchamp,

Acting District Manager.

[FR Doc. 86–17537 Filed 8–4–86; 8:45 am]

BILLING CODE 4310-GJ-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 26, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by August 20, 1986.

Beth Grosvenor,

Acting Chief of Registration, National Register.

ALABAMA

Butler County

Greenville, *Blackwell, W.S., House (Greenville MRA)*, 211 Fort Dale St.
Greenville, *Buell-Stallings-Stewart House (Greenville MRA)*, 205 Fort Dale Rd.
Greenville, *Butler Chapel A.M.E. Zion Church (Greenville MRA)*, 407 Oglesby
Greenville, *Confederate Park (Greenville MRA)*, E. Commerce St.
Greenville, *Dickenson House (Greenville MRA)*, 537 S. Conecuh St.
Greenville, *Evans-McMullan (Greenville MRA)*, 303 Bolling St.
Greenville, *First Baptist Church (Greenville MRA)*, 707 South St.
Greenville, *First Presbyterian Church (Greenville MRA)*, 215 E. Commerce St.
Greenville, *Gaston-Perdue House (Greenville MRA)*, 111 Cedar St.
Greenville, *Graydon House (Greenville MRA)*, 507 Cedar St.
Greenville, *Greenville City Hall (Greenville MRA)*, E. Commerce St.
Greenville, *Greenville Public School Complex (Greenville MRA)*, 101 Butler Circle
Greenville, *Hawthorne-Cowart House (Greenville MRA)*, 319 Bolling St.
Greenville, *Hinson House (Greenville MRA)*, 208 Oliver St.
Greenville, *House at 308 South Street (Greenville MRA)*, 308 South St.
Greenville, *Lane-Kendrick-Sherling House (Greenville MRA)*, 109 Fort Dale St.

Greenville, *Little-Stabler House (Greenville MRA)*, 710 Fort Dale St.
Greenville, *McMullan-Skinner House (Greenville MRA)*, 204 Oliver St.
Greenville, *Theological Building-A.M.E. Zion Theological Institute (Greenville MRA)*, E. Conecuh St.
Greenville, *Ward Nicholson Corner Store (Greenville MRA)*, 219 W. Parmer
Greenville, *Wright-Kilgore House (Greenville MRA)*, 808 Walnut St.

Jefferson County

Birmingham, *Cullom Street-Twelfth Street South Historic District*, Roughly bounded by Eleventh Ave., Thirteenth St., Sixteenth Ave., and Cullom St.

ARKANSAS

Logan County

Ratcliff, *St. Anthony's Catholic Church*, N of AR 22

Union County

El Dorado, *Rialto Theatre*, 117 E. Cedar St.

CALIFORNIA

San Joaquin County

Lodi, *Morse-Skinner Ranch House*, 13063 N. CA 99

CONNECTICUT

Hartford County

Farmington, *Shade Swamp Shelter (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, E of New Britain Ave. on US 6
Hartland, *Tunxis Forest Headquarters House (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, N of Town Rd. on Pell Rd.
Hartland, *Tunxis Forest Ski Cabin (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, W end of Balance Rock Rd.
Simsbury, *Massacoe Forest Pavilion (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, Off Old Farms Rd. in Stratton Brook State Park

Litchfield County

Barkhamsted, *American Legion Forest CCC Shelter (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, West River Rd. in American Legion State Forest
Barkhamsted, *Peoples Forest Museum (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, Greenwood Rd. in Peoples State Forest
Cornwall, *Red Mountain Shelter (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, CT 4 adjacent to Appalachian Trail
Sharon, *Crem Hill Shelter (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, Wickwire Rd.
Torrington, *Paugnut Forest Administration Building (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, 385 Burr Mountain Rd.

Middlesex County

Killingworth, *Oak Lodge (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, W side of Schreeder Pond in Chatfield Hollow State Park

New Haven County

Hamden, *Sleeping Giant Tower (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, 200 Mount Carmel Ave. at Mt Carmel summit in Sleeping Giant State Park
Madison, *State Park Supply Yard (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, 51 Mill Rd.

New London County

East Lyme, *Rocky Neck Pavilion (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, Lands End Point in Rocky Neck State Park
Griswold, *Avery House (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, NE corner Park and Roode Rds.

Windham County

Eastford, *Natchaug Forest Lumber Shed (Connecticut State Park and Forest Depression-Era Federal Work Relief Programs Structures TR)*, Kingsbury Rd. in Natchaug State Forest

FLORIDA

Baker County

Macclenny, *Old Baker County Courthouse*, 14 West McIver St.

Bay County

Panama City, *McKenzie, Robert L., House*, 17 E. Third Ct.

Marion County

Ocala, *Ritz Apartments, The*, 1205 East Silver Springs Blvd.

Palm Beach County

Palm Beach, *Vineta Hotel*, 363 Cocoanut Row
West Palm Beach, *Dixie Court Hotel*, 301 N. Dixie Hwy.

ILLINOIS

Cook County

Evanston, *Buildings at 1104–1110 Seward (Suburban Apartment Buildings in Evanston TR)*, 1104–1110 Seward

MARYLAND

Carroll County

Westminster, *Rockland Farm*, 201 Rockland Rd.

Harford County

Churchville, *Churchville Presbyterian Church*, Intersection of MD 22 and MD 136

Prince Georges County

Accokeek, *Bellevue*, 200 Manning Rd. E

MASSACHUSETTS

Barnstable County

Harwich, *Berry, Captain James, House*, 37 Main St.
Harwich, *South Harwich Methodist Church*, 270 Chatham Rd.

Middlesex County

Newton, *Adams, Amos, House (Newton MRA)*, 37 Park Ave.
Newton, *Adams, Seth, House (Newton MRA)*, 72 Jewett St.
Newton, *Auburndale Congregational Church (Newton MRA)*, 84 Hancock St.
Newton, *Bartlett-Hawkes Farm (Newton MRA)*, 15 Winnetaska Rd.
Newton, *Bayley House (Newton MRA)*, 16 Fairmount Ave.
Newton, *Bemis Mill (Newton MRA)*, 1–3 Bridge St.
Newton, *Bigelow, Henry, House (Newton MRA)*, 15 Bigelow Terrace
Newton, *Blodgett, William, House (Newton MRA)*, 645 Centre St.
Newton, *Brackett House (Newton MRA)*, 621 Centre St.
Newton, *Buckingham, John, House (Newton MRA)*, 33–35 Waban St.
Newton, *Building at 1–6 Walnut Terrace (Newton MRA)*, 1–6 Walnut Terrace
Newton, *Central Congregational Church (Newton MRA)*, 218 Walnut St.,
Newton, *Chestnut Hill, The (Newton MRA)*, 219 Commonwealth Ave.
Newton, *Claflin, Adams, Estate (Newton MRA)*, 156 Grant Ave.
Newton, *Clark House (Newton MRA)*, 379 Central St.
Newton, *Collins, Frederick, House (Newton MRA)*, 1734 Beacon St.
Newton, *Crystal Lake and Pleasant Street Historic District (Newton MRA)*, Roughly bounded by Bracebridge, Pleasant, and Lake Aves., and Crystal St.
Newton, *Curtis, Allan Crocker, House-Pillar House (Newton MRA)*, 28 Quinobequin Rd.
Newton, *Curtis, William, House (Newton MRA)*, 2330 Washington St.
Newton, *Davis, Seth, House (Newton MRA)*, 32 Eden Ave.
Newton, *Dupee Estate (Newton MRA)*, 400 Beacon St.
Newton, *Elliott, Charles D., House (Newton MRA)*, 7 Colman St.
Newton, *Eminence, The (Newton MRA)*, 122 Islington Rd.
Newton, *Estabrook, Rufus, House (Newton MRA)*, 33 Woodland Rd.
Newton, *Evangelical Baptist Church (Newton MRA)*, 23 Chapel St.
Newton, *Farlow and Kendrick Parks Historic District (Boundary Increase) (Newton MRA)*, 223, 226, 234, 237, 242, 243, 248, and 256 Park St.
Newton, *Farquhar, Samuel, House (Newton MRA)*, 7 Channing St.
Newton, *Fenno, John A., House (Newton MRA)*, 171 Lowell Ave.
Newton, *First Unitarian Church (Newton MRA)*, 1326 Washington St.
Newton, *Fuller, Capt. Edward, Farm (Newton MRA)*, 59–71 North St.
Newton, *Gane, Henry, House (Newton MRA)*, 121 Adena Rd.

Newton, *Gray Cliff Historic District (Newton MRA)*, 35, 39, 43, 53, 54, 64, 65, and 70 Gray Cliff Rd.
Newton, *Gunderson Jos., House (Newton MRA)*, 983 Centre St.
Newton, *Harbach John, House (Newton MRA)*, 303 Ward St.
Newton, *Harding House—Walker Missionary Home (Newton MRA)*, 161–163 Grove St.
Newton, *Haskell, Charles, House (Newton MRA)*, 27 Sargent St.
Newton, *House at 1008 Beacon St. (Newton MRA)*, 1008 Beacon Street
Newton, *House at 102 Staniford Street (Newton MRA)*, 102 Staniford St.
Newton, *House at 107 Waban Hill Road (Newton MRA)*, 107 Waban Hill Rd.
Newton, *House at 115–117 Jewett Street (Newton MRA)*, 115–117 Jewett St.
Newton, *House at 15 Davis Avenue (Newton MRA)*, 15 Davis Ave.
Newton, *House at 152 Suffolk Road (Newton MRA)*, 152 Suffolk Rd.
Newton, *House at 170 Otis Street (Newton MRA)*, 170 Otis St.
Newton, *House at 173–175 Ward Street (Newton MRA)*, 173–175 Ward St.
Newton, *House at 203 Islington Road (Newton MRA)*, 203 Islington Rd.
Newton, *House at 215 Brookline Street (Newton MRA)*, 215 Brookline St.
Newton, *House at 2212 Commonwealth Avenue (Newton MRA)*, 2212 Commonwealth Ave.
Newton, *House at 230 Melrose Street (Newton MRA)*, 230 Melrose St.
Newton, *House at 230 Winchester Street (Newton MRA)*, 230 Winchester St.
Newton, *House at 3 Davis Avenue (Newton MRA)*, 3 Davis Ave.
Newton, *House at 307 Lexington Street (Newton MRA)*, 307 Lexington St.
Newton, *House at 309 Waltham Street (Newton MRA)*, 309 Waltham St.
Newton, *House at 31 Woodbine Street (Newton MRA)*, 31 Woodbine St.
Newton, *House at 41 Middlesex Road (Newton MRA)*, 41 Middlesex Rd.
Newton, *House at 47 Sargent Street (Newton MRA)*, 47 Sargent St.
Newton, *House at 511 Watertown Street (Newton MRA)*, 511 Watertown St.
Newton, *House at 60 William Street (Newton MRA)*, 60 William St.
Newton, *House at 68 Maple Street (Newton MRA)*, 68 Maple St.
Newton, *House at 729 Dedham Street (Newton MRA)*, 729 Dedham St.
Newton, *House at 81–83 Gardner Street (Newton MRA)*, 81–83 Gardner St.
Newton, *Hyde Avenue Historic District (Newton MRA)*, 36, 42, 52, 59, and 62 Hyde Ave.
Newton, *Hyde House (Newton MRA)*, 27 George St.
Newton, *Hyde, Eleazer, House (Newton MRA)*, 401 Woodward St.
Newton, *Hyde, Gershom, House (Newton MRA)*, 29 Greenwood St.
Newton, *Jackson House (Newton MRA)*, 125 Jackson St.
Newton, *Jackson, Samuel, Jr., House (Newton MRA)*, 137 Washington St.
Newton, *Jennison, Joshua, House (Newton MRA)*, 11 Thornton St.
Newton, *Judkins, Amos, House (Newton MRA)*, 8 Central Ave.
Newton, *King House (Newton MRA)*, 328 Brookline St.
Newton, *Kingsbury House (Newton MRA)*, 137 Suffolk Rd.
Newton, *Kistler House (Newton MRA)*, 945 Beacon St.
Newton, *Lasell Neighborhood Historic District (Newton MRA)*, Roughly bounded by Woodland and Studio Rds., Aspen and Seminary Aves., and Grove St.
Newton, *Merriam, Galen, House (Newton MRA)*, 102 Highland St.
Newton, *Mount Pleasant (Newton MRA)*, 15 Bracebridge Rd.
Newton, *Needham Street Bridge (Newton MRA)*, Needham St. at Charles River
Newton, *Newton Highlands Historic District (Newton MRA)*, Roughly bounded by Lincoln and Hartford Sts, Erie Ave., and Woodward St.
Newton, *Newton Lower Falls Historic District (Newton MRA)*, Roughly bounded by Hagar, Grove, Washington, and Concord Sts.
Newton, *Newton Street Railway Carbarn (Newton MRA)*, 1121 Washington St.
Newton, *Newton Theological Institution Historic District (Newton MRA)*, Along Herrick Rd. roughly bounded by Braeland Ave., Ripley St., Langley and Bowen School Access Rds., and Cypress St.
Newton, *Newton Upper Falls Historic District (Newton MRA)*, Roughly bounded by Boylston, Elliot, and Oak Sts., and Charles River.
Newton, *Newtonville Historic District (Newton MRA)*, Roughly bounded by Highland Ave., Walnut, Mill, and Otis Sts., and Lowell Ave.
Newton, *Nichols House (Newton MRA)*, 140 Sargent St.
Newton, *Old Chesnut Hill Historic District (Newton MRA)*, Along Hammond St. and Chesnut Hill Rd. roughly bounded by Beacon St., Essex and Suffolk Rds.
Newton, *Old Shepard Farm (Newton MRA)*, 1832 Washington St.
Newton, *Our Lady Help of Christians Historic District (Newton MRA)*, Intersection of Adams and Washington Sts.
Newton, *Page, H.P., House (Newton MRA)*, 110 Jewett St.
Newton, *Parsons, Edward, House (Newton MRA)*, 56 Cedar St.
Newton, *Peabody-Williams House (Newton MRA)*, 7 Norman Rd.
Newton, *Potter Estate (Newton MRA)*, 65–71 Walnut Park
Newton, *Prescott Estate (Newton MRA)*, 770 Centre St.
Newton, *Putnam Street Historic District (Newton MRA)*, Roughly bounded by Winthrop, Putnam, Temple, and Shaw Sts.
Newton, *Railroad Hotel (Newton MRA)*, 1273–1279 Washington St.
Newton, *Rawson Estate (Newton MRA)*, 41 Vernon St.
Newton, *Richards, James Lorin, House (Newton MRA)*, 47 Kirkstall Rd. and 22 Oakwood Rd.
Newton, *Riley, Charles, House (Newton MRA)*, 93 Bellvue St.
Newton, *Sacco-Pettee Machine Shops (Newton MRA)*, 156 Oak St.
Newton, *Salisbury, Jonas, House (Newton MRA)*, 62 Walnut Park
Newton, *Salisbury, Jonas, House (Newton MRA)*, 85 Langley Rd.
Newton, *Silver Lake Cordage Company (Newton MRA)*, 469–471 Watertown St.
Newton, *Simpson House (Newton MRA)*, 57 Hunnewell Ave.
Newton, *Smith, S. Curtis, House (Newton MRA)*, 56 Fairmont Ave.
Newton, *Smith-Peterson House (Newton MRA)*, 32 Farlow Rd.
Newton, *Souther, John, House (Newton MRA)*, 43 Fairmount Ave.
Newton, *Staples-Crafts-Wiswall Farm (Newton MRA)*, 1615 Beacon St.
Newton, *Stone, Ebenezer, House (Newton MRA)*, 391 Dedham St.
Newton, *Stone, Joseph L., House (Newton MRA)*, 77–85 Temple St.
Newton, *Strong's Block (Newton MRA)*, 1637–1651 Beacon St.
Newton, *Sumner and Gibbs Streets Historic District (Newton MRA)*, Roughly Sumner St. between Willow St. and Cotswold Terrace and 184 Gibbs St.
Newton, *Thaxter, Celia, House (Newton MRA)*, 524 California St.
Newton, *Thayer House (Newton MRA)*, 17 Channing St.
Newton, *Union Street Historic District (Newton MRA)*, Roughly Union St. between Langley Rd. and Herrick St. and 17–31 Herrick St.
Newton, *Ward, Ephraim, House (Newton MRA)*, 121 Ward St.
Newton, *Webster Park Historic District (Newton MRA)*, Along Webster Park and Webster St. between Westwood St. and Oak Ave.
Newton, *West Newton Hill Historic District (Newton MRA)*, Roughly bounded by Highland Ave., Lenox, Hampshire and Chesnut Sts.
Newton, *Wheat, Samuel, House (Newton MRA)*, 399 Waltham St.
Newton, *Wittemore's Tavern-Bourne House (Newton MRA)*, 473 Auburn St.
Newton, *Woodward, John, House (Newton MRA)*, 50 Fairlee Rd.
Newton, *Working Boys Home (Newton MRA)*, 333 Nahanton St.

Norfolk County

Needham, *Smith, James, House*, 706 Great Plain Ave.

Plymouth County

Duxbury, *Old Shipbuilder's Historic District*, Both sides of Washington St. from Rowder Ave. to N. of South Duxbury

Mississippi

Jones County

Laurel, *Laurel Central Historic District*, Roughly bounded by Tenth and Thirteenth Sts., First Avenue., Seventh and Fifth Sts., and Eighth Ave.

Montana

Carbon County

Red Lodge, *Red Lodge Commercial Historic District (Boundary Increase)*, South

Broadway between Eighth and Fifteenth Sts.

New York

Suffolk County

Mattituck, *Cox, Richard, House*, Mill Rd.

Ohio

Jefferson County

Steubenville, *Steubenville Commercial Historic District*, Roughly bounded by Washington, Court, Third, Market, and Commercial Sts.

Pennsylvania

Chester County

Chester Springs, *Rice-Pennebecker Farm*, Clover Mill Rd.

Delaware County

Cheyney, *Melrose*, Hill Dr.
Concordville vicinity, *High Hill Farm*, 180 Thornton Rd.

Lancaster County

Lancaster, *Follmer, Clogg and Company Umbrella Factory*, 254–260 W. King St.

Lehigh County

Whitehall, *Dent Hardware Company Factory Complex*, 1101 Third St.

Philadelphia County

Philadelphia, *Snellenburg's Clothing Factory*, 642 N. Broad St.

[FR Doc. 86–17512 Filed 8–4–86; 8:45 am]
BILLING CODE 4310–70–M

National Register of Historic Places; Notice on Proposed NHL Boundaries

July 25, 1986.

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation, and therefore, are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations 36 CFR 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

Comments on the proposed boundaries will be received for 60 days after the date of this notice. Please address replies to Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, Attention: Chief of Registration (202) 343–9536. Copies of the documentation of the landmarks and their proposed boundaries, including maps may be obtained from the same office.

Beth Grovenor,

Acting Chief of Registration, National Register of Historic Places, Interagency Resources Division.

Mesilla Plaza

Mesilla (Dona Ana County), New Mexico

Verbal Boundary Description

The National Historic Landmark boundary has been drawn to include a total area of six acres that contain Mesilla Plaza and those historic structures immediately surrounding the plaza.

The boundary begins at the northeast corner of Calle de Principal and Calle de Parian, and runs south along the east curb of Calle de Principal for approximately 200 feet. Then it proceeds east along the south wall of Building 9 to the west curb of Calle de Guadalupe. The boundary then turns south and runs for approximately 35 feet, to a point on the western curb of Calle de Guadalupe. The boundary then turns due east and extends along the south wall of Building 22 (or the party wall between building 22 and a theatre) for a distance of approximately 150 feet. At this point the boundary turns north and follows along the east wall of Building 22 and Building 10, crossing Calle de Parian and running along the east wall of Building 11. Turning east at the northeastern corner of Building 11, it continues for approximately 50 feet to the west curb of Calle de Albino, and continues north along the west curb of Calle de Albino for approximately 200 feet. The boundary then turns west for approximately 200 feet to the east curb of Calle de Guadalupe, thence north along the east curb of Calle de Guadalupe for approximately 300 feet. It then turns west crossing Calle de Guadalupe, running approximately 30 feet behind Building 13, and extends to the west curb of Calle de Principal, a distance of approximately 200 feet. Here the boundary continues south along the west curb of Calle de Principal for approximately 280 feet. The boundary then turns west for 300 feet, across vacant ground, to the east curb of Calle de Arroyo, thence southwest along the east curb of Calle de Arroyo for approximately 200 feet where the boundary turns due east, across vacant ground, for approximately 150 feet. Here the boundary turns south for approximately 150 feet, across vacant ground to the south curb of Calle de Parian. It then continues east along the south curb of Calle de Parian for approximately 150 feet to the northeast corner of Calle de Principal and Calle de Parian, and the beginning point of the boundary.

[FR Doc. 86–17596 Filed 8–4–86; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How oftern the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331.

Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments

should also be sent to the OMB reviewer, Nancy Wentzler, telephone (202) 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Occupational Safety and Health Administration
Occupational Exposure to Noise
1218–0048; OSHA 238
On occasion
Businesses or other for profit; small businesses or organizations
192,879 responses; 5,139,328 hours; no forms

This standard requires employers to establish and maintain accurate records of employee exposure to noise and audiometric tests performed in compliance with the provisions of the standard. These records are used by physicians, employers, employees and the Government to determine whether occupation-related hearing loss has occurred, to prevent further deterioration of hearing, and to determine the effectivenes of employers' hearing conservation programs.

Reinstatement

Pension and Welfare Benefits Administration
Summary Plan Description Requirements Under ERISA
1210–0039
Other (5 or 10 year cycle depending on whether a plan is amended in initial 5 years)
Businesses or other for profit; non-profit institutions; small businesses or organizations
14,077,040 responses; 5,307,744 hours

As required by ERISA, this existing regulation provides plan administrators with the procedures and guidelines necessary to furnish plan participants and beneficiaries with Summary Plan Descriptions that clearly explain their rights and obligations.

Regulation Relating to Supplemental Payments
1210–0041
Annually
Individuals or households; businesses or other for profit; small businesses or organizations
50,915 responses; 4,243 hours

The regulation provides among other things, that under certain conditions cost of living benefits payments can be made to pre-1977 retirees without such payment being considered either a pension plan or a welfare plan under ERISA. Such payments must be accompanied by a written notice.

Prohibited Transaction Class Exemption 79–1 and Recapture Exemption
1210–0059
On occasion
Businesses or other for profit; small businesses or organizations
141,458
responses; 141,458 hours

This class exemption exempts from the prohibited transaction restrictions of ERISA the effecting or executing of securities transactions on behalf of an employee benefit plan by a person who is a fiduciary with respect to the plan and who is acting in such transactions as agent for the plan.

Signed at Washington, DC, this 31st day of July, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86–17597 Filed 8–4–86; 8:45 am]

BILLING CODE 4510–29–M

Employment and Training Administration

[TA–W–17,067A Mine #20, TA–W–17,067B Mine #24–B, TA–W–17,067C Mine #24–D, TA–W–17,067D Mine #25]

Barnes and Tucker Coal Co., Barnesboro, PA; Negative Determination Regarding Application for Reconsideration

By an application dated July 2, 1986, the United Mine Workers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers at the Barnes & Tucker Coal Company, Barnesboro, Pennsylvania. The denial notice was published in the Federal Register on June 24, 1986 (51 FR 22990).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that workers producing coal at the mines listed above should be eligible to apply for adjustment assistance because of reduced demand for metallurgical coal caused by steel imports.

Findings in the investigation show that Barnes & Tucker Coal Company is an independent producer which sold metallurgical coal to steel companies. Workers of independent producers of metallurgical coal, not owned or controlled by a steel company, may qualify for adjustment assistance when the Department can substantiate that increased imports of like or directly competitive coal has contributed importantly to decreased company sales or production and to worker separations. U.S. imports of metallurgical coal have been negligible since 1981; U.S. exports of metallurgical coal have increased every year since 1983.

The Department addressed the issue of an independent coal producer supplying coal to a steelmaking facility in its determination on the subject petition. During the time period relevant to the investigation, Barnes and Tucker was an independent coal producer and not related to Inland Steel or LTV Steel by ownership or control. Mines #24–B and #24–D were acquired by Barnes & Tucker from LTV Steel in October, 1982.

Mine #25 is owned by the Inland Steel Company. Inland Steel assumed the operation of production at Mine #25 from Barnes and Tucker in 1982. All workers at Mine #25 were certified for trade adjustment assistance under petition TA–W–15,279 which expired on July 12, 1986. Production at the mine ceased in 1983.

Information furnished by the union on imports of utility coal by several U.S. utilities is unrelated to coal customers of Barnes and Tucker Coal Company. Imports of utility coal represented less than one percent of U.S. domestic production from 1981 to 1985.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of July 1986.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-17599 Filed 8-4-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,688]

Honeywell, Inc., Fort Washington, PA; Negative Determination Regarding Application for Reconsideration

By an application dated June 23, 1986, the International Union of Electronic and Electrical Workers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers at Honeywell, Inc., Fort Washington, Pennsylvania. The denial notice was published in the **Federal Register** on June 17, 1986 (51 FR 21991).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union lists several parts that were imported and claims that worker separations at Fort Washington were the result of importing these parts as directed replacements for those produced by the workers at Fort Washington. The union also cites workforce reductions at Fort Washington since 1965.

Findings in the investigation show that many components used in the assembly of the instruments are procured from outside domestic sources. Company officials reported that some component parts have been imported recently but none of the parts were previously produced at Fort Washington. They referenced Article VIII, Section 2 of the Collective Bargaining Agreement which does not permit the subletting of work by the company.

Company officials also reported that recent workforce reductions at Fort Washington were caused by the changing product mix and increased automation. Technological unemployment would not provide a basis for worker certification.

Only workforce reductions at Fort Washington subsequent to November 18, 1984 are applicable to this petition. Section 223(b)(1) of the Trade Act does not permit the certification of workers separated from employment more than one year prior to the date of the worker petition on which a certification is issued. The date of the worker petition is November 18, 1985.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 23rd day of July 1986.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-17601 Filed 8-4-86; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance; Ford Motor Co. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 15, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 15, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 28th day of July 1986.

APPENDIX

Petitioner Union/Workers of Former Workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Ford Motor Co., Direct Market Operations (workers)	Newark, NJ	7/7/86	7/1/86	TA-W-17,724	Car parts.
California Manufacturing Co. (ACTWU)	St. James, MO	7/21/86	7/18/86	TA-W-17,725	Men's and boys' jackets.
California Manufacturing Co. (ACTWU)	California, MO	7/21/86	7/18/86	TA-W-17,726	Men's and boys' jacket.
EZ Construction (workers)	Keene, ND	7/23/86	7/17/86	TA-W-17,727	Oil field maintnance and construction.
Dresser Atlas Div. of Dresser Industries (workers)	Dallas, TX	7/9/86	7/2/86	TA-W-17,728	Shotgun shells, primers, shot and lead.
Al's Oilfield Service (workers)	Williston, ND	6/9/86	6/3/86	TA-W-17,729	Oil well service.
B.J. Titan Service, (Company)	Marshall, TX	7/18/86	7/11/86	TA-W-17,730	Oil and gas equipment operators.
Santa Fe Energy (workers)	Midland, TX	7/17/86	7/13/86	TA-W-17,731	Oil and gas field services.
Ram Drilling Co. (company)	Browns, IL	7/18/86	7/15/86	TA-W-17,732	Oil and gas drilling.
Armstrong Rubber Co., Midwest Div. (URW)	Des Moines, IA	7/16/86	7/11/86	TA-W-17,733	Tires, farm, radial light truck, large truck.
David I. Greenberg (ILGWU)	Pleasantville, NJ	7/16/86	7/9/86	TA-W-17,734	Swimming suits.
D.B. Drilling, Inc. (workers)	Abilene, TX	7/15/86	7/10/86	TA-W-17,735	Oil and gas drilling.
Permian Tank & Mfg Inc. (company)	Odessa, TX	7/14/86	7/10/86	TA-W-17,736	Oil storage tanks, heater treaters, separators oil field process equipment.
Mon-Dak Exploration Inc. (workers)	Sidney, MT	7/14/86	7/8/86	TA-W-17,737	Oil drilling.
Brinkerhoff Signal Drilling Co. (workers)	Houston, TX	7/10/86	7/5/86	TA-W-17,738	Oil drilling.
Levis Strauss & Co. (company)	Tyler, TX	7/10/86	7/7/86	TA-W-17,739	Blue jeans.
U.S. Steel Mining Co., Decota Mining District (UMWA)	Decota, WV	6/18/86	7/16/86	TA-W-17,740	Coal mining.
Osceda Shoe Company (workers)	Manila, AR	6/27/86	7/19/86	TA-W-17,741	Cutting & stitching uppers of golf shoes.
Ziyad (company)	Denville, NJ	7/16/86	7/11/86	TA-W-17,742	Office automation & paper processing devices.

APPENDIX—Continued

Petitioner Union/Workers of Former Workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
United Technologies, Diesel Systems (IUE)	Springfield, MA	5/20/86	5/14/86	TA-W-17,743	Diesel pump systems.
Rando Machine Corp. (workers)	Macedon, NY	7/17/86	7/10/86	TA-W-17,744	Machinery for the cleaning, opening, blending & feeding of fiber for yarn manufacturing.
CTS Corp. (IUE)	Skyland, NC	7/17/86	7/14/86	TA-W-17,745	Component electronics.
SCM Metal Products (Boilermakers)	Hammond, IN	7/18/86	7/9/86	TA-W-17,746	Cooper powder, bronze powder, tin powder.
Ramsey Piston Ring Div., TRW Automotive Products (workers).	Manchester, MO	7/17/86	7/15/86	TA-W-17,747	Piston rings for cars, tractors.
Glen Irvan Corp. (workers)	Penfield, PA	7/17/86	7/14/86	TA-W-17,748	Mining and sales of coal.
Sojourner Drilling Corp. (workers)	Abilene, TX	7/16/86	7/11/86	TA-W-17,749	Drilling & prospect oil and gas.
Midland Ross Corp., Midtex Div. (IUE)	North Mankato, MN	7/17/86	7/14/86	TA-W-17,750	Electronic components.
Smith Drilling Co. (workers)	Lawrenceville, IL	7/16/86	7/11/86	TA-W-17,751	Oil drilling.
Sivall, Inc. (workers)	Odessa, TX	7/15/86	7/11/86	TA-W-17,752	Oil and gas processing equipment.
Genex Corp. (workers)	Paducah, KY	7/16/86	7/14/86	TA-W-17,753	L-Phenylalanine.
Marie Dianne Fashions (ILGWU)	Springfield, MA	7/14/86	7/11/86	TA-W-17,754	Women's skirts.
E. Berhard Faber, Inc. (OCAW)	Mt. Top, PA	7/15/86	7/11/86	TA-W-17,755	Pencils and markers.
Canteen/Vending (company)	Kansas City, MO	7/22/86	7/14/86	TA-W-17,756	Innertubes—tires.
The Timken Co. Timken Research (workers)	Canton, OH	4/29/86	4/21/86	TA-W-17,757	Experimental work on new machines also steel and roller bearings.
Lynchburg Foundry Co. (USWA)	Radford, VA	7/16/86	7/14/86	TA-W-17,758	Automotive castings.
Lepants Garment Co. (workers)	Lepanto, AR	7/14/86	7/10/86	TA-W-17,759	Womens dresses.
Wood Wireline Service Inc. (workers)	Gillette, WY	7/14/86	6/26/86	TA-W-17,760	Wood wireline.
Mindy Leathers Fashion Inc. (workers)	New York, NY	7/10/86	7/7/86	TA-W-17,761	Leather fashions.
Eagle Casing (workers)	Williston, N.D	6/25/86	6/21/86	TA-W-17,762	Caseing and tubing for oil wells.
Federal Cartridge Corp. (workers)	Anoka, MN	7/23/86	7/18/86	TA-W-17,764	Sale and manufacture of ammunition primers.
Four Flags Drilling Co., Inc. (workers)	Corpus Christi, TX	7/21/86	7/11/86	TA-W-17,764	Oil well drilling.
Masey Construction (workers)	Odessa, TX	7/14/86	7/7/86	TA-W-17,765	Crude oil.
Trojan Luggage Co. (United Furniture Wkrs of America)	Memphis, TN	5/5/86	5/2/86	TA-W-17,766	Tote bag, luggage, footlockers and attache cases.
Laurens Shirt Corp (workers)	Laurens, SC	7/23/86	7/9/86	TA-W-17,767	Woven shirts.
Precision Exploration Co., Inc. (workers)	Olney, IL	7/23/86	7/14/86	TA-W-17,768	Drilling rigs.
Bristol Myers Co., Industrial Div. (workers)	Syracuse, NY	7/16/86	7/11/86	TA-W-17,769	Pharmaceutical products.
Diamond Shamrock Exploration Co. (workers)	Amarillo, TX	7/14/86	6/19/86	TA-W-17,770	Oil and gas exploration.
Henley Drilling Co. (workers)	Dallas, TX	7/14/86	7/3/86	TA-W-17,771	Crude oil.
Syletek, Inc. (workers)	Laurel, MA	7/11/86	7/3/86	TA-W-17,772	Plastic heels for shoes.
El Paso Assemblies, Auto Assemblies, Inc. (workers)	El Paso, TX	6/24/86	6/17/86	TA-W-17,773	Electrical power cords and harnesses.
Byron Jackson Pump Div., Borg-Warner Corp. (OCAW)	Tulsa, OK	6/30/86	6/17/86	TA-W-17,774	Castings.
Eastman Whipstock Inc. (workers)	Abilene, TX	7/14/86	7/8/86	TA-W-17,775	Oil drilling and down hole tools.

[FR Doc. 17600 Filed 8-4-86; 8:45 am]

BILLING CODE 4510-30-M

[TA W-17087, etc.]

Nova Manufacturing Co., Red Boiling Springs, TN; et al., Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 27, 1986, applicable to all workers of Nova Manufacturing Company, Red Boiling Springs, Tennessee. The Notice of Certification was published in the **Federal Register** on July 16, 1986 (51 FR 25764).

Additional information furnished to the Department by the company revealed that the New York office provided administration, sales nd other support operations to the Tennessee plant. All employees at both locations were laid off on October 31, 1985.

The intent of the certification is to cover all workers of the Nova Manufacturing Company at both locations who were affected by the decline in the sales or production of ladies' jeans and dress pants related to import competition. The notice therefore, is amended by including workers at the New York office of George J. Nova, Inc., d/b/a Nova Manufacturing Company, New York, New York under the certification issued to workers of Red Boiling Springs, Tennessee of the Nova Manufacturing Company.

The amended notice applicable to TA-W-087, is hereby issued as follows: "All workers of Nova Manufacturing Company, Red Boiling Springs, Tennessee and George J. Nova, Inc., d/b/a Nova Manufacturing Company, New York, New York who became totally or partially separated from employment on or after December 11, 1984 and before November 30, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 23rd day of July 1986.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 86-17602 Filed 8-4-86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

OMB Circular A-76 Management Study; Office of Workers' Compensation Programs Mail and File Operations Nationwide

AGENCY: Employment Standards Administration (ESA), Labor.

ACTION: Notice of OMB Circular A-76 Management Study.

SUMMARY: The Office of Management, Administration and Planning (OMAP), ESA, has scheduled an OMB Circular A-76 management study of the Office of Workers' Compensation Programs mail and file operations nationwide to begin on August 18, 1986.

FOR FURTHER INFORMATION CONTACT:

Kenneth I. Jacobson, 202-523-7564

or

Aaron L. Shapiro, 202-523-7601.

Signed at Washington, DC, this 31st day of July, 1986.

Carol A. Gaudin,

Director, Office of Management, Administration and Planning.

[FR Doc. 86-17603 Filed 8-4-86; 8:45 am]

BILLING CODE 4510-27-M

Wage and Hour Division

Certificate Authorizing the Employment of Learners at Special Minimum Wages

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949 53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firm listed in this notice has

been issued a special certificate authorizing the employment of learners at hourly wage rates lower than the minimum wage rate otherwise applicable under section 6 of the Act. The effective and expiration dates, number of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the caption below are as established in those regulations.

The following certificate was issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended).

Flushing Shirt Mfg. Co., Inc., Waynesburg, PA; 04–18–86 to 04–17–87; 10 learners for normal labor turnover purposes. (Work Shirts)

The learners certificate has been issued upon the representations of the employer which, among other things were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available.

The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of this certificate may seek a review or reconsideration thereof on or before August 20, 1986.

Signed at Washington DC, this 30th day of July 1986.

Paula V. Smith,

Administrator.

[FR Doc. 86–17604 Filed 8–4–86; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[86–54]

Intent To Grant an Exclusive Patent License; Enerpro, Inc.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Enerpro, Inc., Goleta, California, a limited, exclusive, royalty-bearing, revocable license to practice the inventions as described in U.S. Patent No. 4,388,585 for a "Electrical Power Generating System," which issued on June 14, 1983 and U.S. Patent No. 4,473,792 for "Coupling An Induction Motor Type Generator to A.C. Power Lines," which issued on September 25, 1984, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of the Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATE: Comments to this notice must be received by October 6, 1986.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453–2430.

Dated: July 29, 1986.

John E. O'Brien,

General Counsel.

[FR Doc. 86–17548 Filed 8–4–86; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–498A]

Houston Lighting and Power Co. et al.; No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the construction permit review of Unit 1 of the South Texas Project by the Attorney General and the Commission. The finding is as follows:

"Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the 'significant change' determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since the issuance of the South Texas construction permits to Houston Lighting and Power Company, et al. and the consummation of the settlement agreement before the Commission, the staffs of the Planning and Resource Analysis Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

"In reaching this conclusion, the staff considered the structure of the electric utility industry in east Texas, the events relevant to the South Texas construction permit review and the antitrust settlement subsequent to the constuction permit review.

"The conclusion of the staff's analysis is as follows: 'Prior to the antitrust settlement agreement before the Nuclear Regulatory Commission (NRC), competition for the purchase or sale of power and energy and related ancillary services in the Texas bulk power market was primarily limited to intrastate power transactions. This intrastate power network has remained in tact for many years—notwithstanding the fact that some power entities doing business on the perimeter of the state of Texas as well as some systems within the state have expressed interest in interstate bulk power transactions for quite some time. Although the Texas bulk power market has remained primarily intrastate in nature, there have been several changes since the NRC settlement in 1980 that have provided competitive stimuli to this market—particularly in the areas served by the applicant systems.

"The change that has had the greatest impact in the Texas bulk power market has been the implementation of the settlement agreement. Although both direct current (DC) transmission ties with the Southwest Power Pool (SWPP) have not been completed and DC wheeling rates not finalized, the North tie has been completed and the Central and South West operating systems are exchanging power and energy over this tie. Plans have been developed to expand the North tie (as contemplated in the settlement agreement) to accommodate a significant power transfer by a Texas co-generating entity. Capacity (15%) in both DC interties has

been reserved for firm power transactions for power systems wishing to buy or sell in the interstate market. Moreover, wheeling to, from or over the DC interties is now available to any system wishing to access the DC interties.

'To remedy a growing need to redistribute power from co-generators concentrated in industrialized pockets in the state, the Texas Public Utility Commission promulgated rules requiring mandatory transmission or wheeling of co-generated power in Texas. These rules have enabled corporate entities, heretofore spectators on the fringes of the Texas bulk power market, to market their by-product power and energy and become players in the market, i.e., barriers to entry into the production and sale of bulk power in Texas have been lowered as a result of the newly adopted wheeling rules.

'Increased coordination and cooperation among bulk power suppliers has resulted in a more open market in the state of Texas over the past five years. Houston Lighting & Power C. (HLP) has increased and extended a power purchase agreement with the City of Austin and entered into a wholesale power purchase agreement with the Public Service Board of the City of San Antonio. A computer controlled bulletin board, advising all members of the Electric Reliability Council of Texas (ERCOT) of available power and energy in the state is now in place, making "shopping" for power and energy easier for all systems in the state and enabling power systems to better meet the individual needs of their systems.

'All types of power entities in Texas, municipal, cooperative and investor owned, are beginning to explore joint generation projects both within and outside the state. The concept of interstate planning and participation in interstate power projects is a new one for most Texas power entities. Although the movement to interstate cooperation and competition is still in its embryonic stages in Texas, this movement was contemplated by and provided for in the antitrust settlement agreement before both the NRC and the Federal Energy Regulatory Commission. (The settlement agreement provides for requests for capacity increases and ownership purchases in the DC interties at intervals of every three years beginning in June of 1986 and lasting until June of 2004.) It is anticipated that this movement toward increased cooperation and competition will continue among intrastate power systems within Texas and also between intrastate power systems wishing to engage in joint power supply planning and power supply transactions across state borders.

'Staff's analysis of the changes in the licensees' activities since the antitrust settlement, has not identified any significant negative activities which have adversely impacted the competitive process on-going in the Texas bulk power market. Although there are still physical impediments to complete synchronous operations between most Texas power entities and systems outside of Texas, i.e., there are no major alternating current interconnections between ERCOT and the SWPP, the settlement agreement provided power systems inside of Texas as well as in surrounding states the opportunity to exchange power and energy and engage in bulk power transactions. Staff views the settlement agreement as a major first step in opening up power supply options to all power entities in ERCOT and the SWPP. Based upon the successful implementation of the settlement agreement to date and the lack of any significant negative competitive activities by the licensees since the settlement agreement, staff recommends that a no significant change determination be made pursuant to the application for an operating license for Unit 1 of the South Texas Project.'

"Based upon the staff's analysis, it is my finding that there have been no 'significant changes' in the licensees' activities or proposed activities since the completion of the previous antitrust review in connection with the construction permit."

Signed on July 25, 1986, by Harold R. Denton, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding, may file, with full particulars, a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the initial publication of this notice in the **Federal Register**. Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the OL, only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated in Bethesda, Maryland, this 29th day of July 1986.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning and Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 86-17576 Filed 8-4-86; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extention of Approval Under the Paperwork Reduction Act of the Information Collection Requirement Contained in 29 CFR Part 2623

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMN approval of extension.

SUMMARY: The Pension Benefit Guaranty Corporation has requested approval by the Office of Management and Budget for an extension of the expiration date of a currently approved information collection requirement (1212-0029). The information collection, which is scheduled to expire on August 31, 1986, is contained in PBGS's regulation on Benefit Reductions in Terminated Single-Employer Pension Plans and Recoupment of Benefit Overpayments, 29 CFR Part 2623. Under that regulation, the administrator of a terminated pension plan that is covered by the PBGC insurance program must reduce benefit to an estimated guaranteed benefit level. The plan administrator must also submit to the PBGC information concerning the action taken. There has been no change in the substance or in the method of information collection under the regulation. The effect of this notice is to advise the public of PBGC's request for OMB approval of an extension of its authority to collect this information.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 35100, Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-

956–5050 (202–956–5059 for TTY and TDD). These are not toll-free numbers.

Issued at Washington, DC, this 30th day of July 1986.

Kathleen P. Utgoff,

Executive Director.

[FR Doc. 86–17592 Filed 8–4–86; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–15232; File No. 812–6404]

Thirteen Star Partners, Ltd.; Application

July 30, 1986.

Notice is hereby given that Thirteen Star Partners, Ltd. ("Applicant"), a Florida limited partnership, 180 Park Avenue North, Suite 2–B, Winter Park, Florida 32789, filed an application on June 2, 1986, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), for an order exempting Applicant from all provisions of the Act. All interested persons are referred to application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for all the applicable provisions thereof.

Applicant was formed for the purpose of participating in the distribution of thirteen designated motion pictures ("Pictures") through the acquisition of a limited partnership interest in Warner Bros. Thirteen Star Distributing Company, a California limited partnership ("Venture"). Allen J. Schwalb will act as the general partner of Applicant ("General Partner") and Warner Bros. Distributing Corporation ("Warner") will act as general partner of the Venture and will contribute certain rights in the Pictures to the Venture as its capital contribution, as well as cash needed to meet expenses in excess of Applicant's contributions.

Applicant states that it intends to offer a minimum of 7½ and a maximum of 377 units of limited partnership interest ("Units") pursuant to Regulation D promulgated under the Securities Act of 1933 ("Securities Act") at a price of $240,000 per Unit ("Offering"). The total purchase price per Unit is payable through a "subscription capital contribution" of $88,000, and an "additional capital contribution" of $152,000. The additional capital contribution of $152,000 per Unit is to be payable through the proceeds of a loan to the limited partner from Bank of America, Los Angeles, California ("Loan").

According to the application, the Units will be offered through the Applicant and various members of the National Association of Securities Dealers' registered broker/dealers. Each investor will receive a private placement memorandum fully describing the Offering, prepared in accordance with Regulation D. Applicant will file with the Commission a Notice of Sales of Securities pursuant to Regulation D or section 4(6) on Form D relating to the sale of the Units under the Securities Act. Each prospective investor must have: (a) A net worth (exclusive of house, furnishings and automobiles) of at least $400,000 per Unit purchased (prorated for fractional Units, but not less than $200,000); and (b) estimated taxable income for Federal income tax purposes for 1986 subject to tax at the 50% marginal rate if more than one half Unit is purchased or the 40% marginal rate if one half Unit or less is purchased.

Applicant states that the purpose of the Venture is to own, distribute and exploit the Pictures. Warner, as the general partner of the Venture, must use the amount contributed by Applicant to distribute and exploit the Pictures. Warner will contribute to the Venture all of its right, title and interest in and to each Picture necessary to exploit the Pictures in media in the United States to the extent owned by Warner. Applicant's contribution to the Venture will be used primarily to fund certain advertising and releasing costs incurred by the Venture in connection with the Pictures. Eleven of the Pictures are scheduled to be released between September and December 1986 and two of the Pictures are scheduled for release in 1987.

Applicant states that although the Agreement of Limited Partnership of the Venture ("Venture Agreement") contains no requirements concerning how Warner should advertise or release the Pictures or how much of the Venture's assets Warner shall expend with respect to any Picture, Warner, as the general partner of the Venture, has a fiduciary duty to exercise its business judgment in good faith and Applicant expects that Warner will distribute the Pictures in accordance with the customary standards and practices of Warner and the motion picture industry.

Warner is responsible for the day-to-day operation of the Venture, having sole and complete authority to make all decisions as to the distribution and exploitation of the Pictures. Warner, however, is obligated to devote only such time to the Venture as it, in its sole discretion, determines to be necessary and appropriate. Applicant is entitled to participate in certain major decisions regarding the Venture's business. In particular, Warner would need Applicant's consent to revise the Venture Agreement or to dispose of substantially all of the Venture's assets.

Applicant will be entitled to allocations of items of gross income and gain measured by certain percentages of gross receipts of the pictures, as well as by certain fixed amounts. "Gross receipts" are generally defined as all monies received by the Venture or Warner, without any reductions, from the following sources in the U.S.: Theatrical exhibition of the Pictures; non-theatrical exhibition of the Pictures; network, pay/cable and syndicated television; and specifically defined percentages of certain ancillary income. Applicant will generally be allocated 99% of all items of the Venture's losses and deductions attributable to the Venture's cash expenditures (primarily advertising expenses and the management fee to Warner), as well as to amortization of positive release prints of the Pictures, until Applicant has been allocated an amount of loss and deduction equal to its capital contribution. Warner is allocated 100% of all items of deduction attributable to depreciation of the Pictures and all other deductions not allocated to Applicant.

All items of Applicant's income, gain, loss and deduction will be allocated 98% to the Limited Partners and 2% to the General Partner, with the exception of certain special allocations. Items of Applicant credit will be alocated 98%, or the maximum permitted by law, if different, to the Limited Partners, with the balance to the General Partner. All items allocated to the Limited Partners as a group generally will be allocated among them in accordance with the respective number of Units owned by each. In the event that all Limited Partners are not admitted on the same date, the allocations per Unit for 1986 may differ depending on admission dates.

Distributions of available cash will be made by Applicant beginning in 1987. Distributions will generally be made 98% to the Limited Partners and 2% to the General Partner, with the exception of permitted distributions made in return of capital and distributions, the proceeds of which must be used to make payments of principal and interest under the Loan. It is expected that substantial portions of such cash distributions in 1987, 1988 and 1989 will be used to make payments of principal under the Loan. Upon the dissolution of Applicant, the General Partner will liquidate the assets as promptly as is consistent with obtaining a fair value. Any gains

therefrom will be first allocated pro rata to all partners who have a negative balance in their capital account in order to bring such accounts up to zero, and thereafter gains and losses will allocated in accordance with allocation provisions described above.

Applicant concedes that it may be characterized as an investment company as defined in section 3(a) of the Act, but submits that it is part of a unique business agreement of a type that Congress did not intend to be regulated pursuant to the Act, and that therefore its exemption from the Act would be appropriate in the public interest, and consistent with the protection of investors and the purposes clearly intended by the policy and provisions of the Act. Unlike securities held by traditional investment companies, it is asserted that Applicant's interest in the Venture will not be liquid, mobile, or readily negotiable. Applicant will have no discretion with regard to investing the net proceeds raised in the Offering and will not be able to make any other investments. The use of all proceeds obtained by Applicant from any source have been prescribed by the Partnership Agreement and the Venture Agreement.

Finally, Applicant contends that investors in Applicant will be amply protected by: (a) Full disclosure in the private placement memorandum of all aspects of their investment; (b) suitability standards for prospective investors established by Applicant; (c) limitation on the discretion of Applicant's General Partner; (d) right of Limited Partners provided under the Partnership Agreement and Florida law; and (e) reporting requirements imposed on Applicant and the Venture.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 20, 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 issue, 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-17590 Filed 8-4-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23474; File No. SR-CBOE-86-22]

Self-Reguatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to RAES in Equity Options; Member Eligibility Criteria

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 July 17, 1986, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The following text is new.

the following describes eligibility criteria for members to participate as contra-brokers on RAES in equity options for a six-month pilot program (as more fully described in SR-CBOE-85-16):

RAES Eligibility in Equity Options

1. Any Exchange member who has registered as a market-maker is eligible to log onto RAES in equity options, so long as the following requirements are met.

2. The market-maker must log onto the system using his own acronym and individual password. All RAES trades to which the market-maker is a party will be assigned to and will clear into his designated account.

3. The market-maker may designate that his trades be assigned to and clear into either his individual account or a joint account in which he is a participant. Consistent with existing Exchange rules and interpretations thereof, only one participant in a joint account may use the joint account for trading in a particular option class at one time, either on RAES or in regular trading.

4. A market-maker may log onto RAES in a particular equity option only in person and may continue on the system only as long as he is present in that trading crowd. A member may not remain on the RAES system and must log off of the system when he has left the trading crowd, unless the departure is for a brief interval.

5. Failure of a member to abide by these eligibility requirements, including but not limited to logging off RAES upon leaving the trading crowd will be subject to disciplinary action under, among others, Rule 6.20 and Chapter XVII of the Exchange Rules. Such failure may also be the subject of remdial action by the Market Performance Committee, including but not limited to suspending a member's eligibility for participation on RAES.

6. In unusual market conditions, the Exchange may grant exemptive relief from these provisions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

This proposed rule change set forth RAES eligibility criteria for market-makers to participate in the RAES pilot in equity options.

The Exchange believes that the criteria set forth in the proposed rule change are consistent with the Act, in reaching a fair accommodation between in-person participation in the system and the eligibility of all competing market-makers to be on the system in that event. The proposed rule change also provides that the Exchange may waive the in-person eligibility requirement in the event of unusual market conditions. This is provided because, given the Exchange's lack of experience in piloting RAES in equity options, it is not known whether there will be sufficient interest among market-makers in a trading crowd to allow RAES to continue in a particular equity option.

The requirements relating to which accounts may be placed on the RAES system are generally consistent with existing Exchange rules and interpretations thereof. The Exchange believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 and in particular Section 6(b)(5) thereof because the proposed rule change is designated to increase market depth and liquidity and to provide an efficient and fair system for the accommodation of customer transactions on the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days fo the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, 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. 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 August 26, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 29, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-17588 Filed 8-4-86; 8:45 am]

BILLING CODE 8010-01-M.

[Release No. 34-23472; File No. SR-CSE-86-3]

Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange Relating to Dues and Fee Increases

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act") 15 U.S.C. 78s(b)(1), notice is hereby given that on July 7, 1986, the Cincinnati Stock Exchange ("Exchange") filed with Securities asnd Exchange Commission the Proposed Rule Change as described in Items I, II, III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

I. The Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed Rule Change increases the transaction fee for designated dealers, establishes certain new fees, modifies the discount schedule applicable to gross fees, and raises membership dues. Below is the text of the proposed rule change. (Additions italicized, deletions bracketed).

National Securities Trading System Fees [1]

(a) . . .
(b) . . .
(c) *$0.0125* [0.01] will be charged designated dealer members when acting as principal, except when acting as principal as described in (d) below.
(d) . . .
(e) . . .
(f) . . .
(g) Except for the first $0.005 per share charged designated dealer members when acting as principal against a public agency order of another CSE member, and the $0.005 per share charge described in (d) above, discounts will be applied to both Proprietary Member's and non-members' total gross fees charged in any given month as follows:

Gross fees	Discount
Up to $10,000	0%
$10-$25,000 [$10-$20,000]	*5%* [10%]
$25-$50,000 [$20-$40,000]	*10%* [20%]
$50-$75,000 [40 and above]	*15%* [30%]
$75-$100,000	*20%*
$100,000 and above	*25%*

[1] The Commission previously has approved the establishment of a fee schedule by the CSE for National Securities Trading System trades. *See* Securities Exchange Act Release No. 18409 (January 11, 1982), 47 FR 2967.

(i) *Each member will be charged $10 per month for each NSTS security in which such member is a designated dealer. Multiple designated dealers in the same NSTS security will each be charged a fee for such security.*

(j) *Each designated dealer member will be charged $100 per month for each NSTS device (video or printer) used by such member.*

Exchange Dues

The dues of all proprietary members shall be *two thousand dollars ($2,000)* [fifteen hundred dollars ($1,500)] per annum payable quarterly, in advance, on January 1st, April 1st, July 1st, and October 1st.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the Proposed Rule Change is to fund increased operational and administrative expenses.

The Proposed Rule Change is consistent with section 6(b)(4) of the Securities Exchange Act of 1934 (the "Act"), which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the Proposed Rule Change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.

The Exchange has neither solicited nor received comments on the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission such action is necessary or appropriate in the

public interest for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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, Securites 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. 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 August 26, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 28, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-17589 Filed 8-4-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-5494]

Zaitech Capital Corp.; Issuance of a Small Business Investment Company License

On February 14, 1986, a notice was published in the **Federal Register** (51 FR 5633) stating that an application has been filed by Zaitech Capital Corporation with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1986)) for a license as a small business investment company.

Interested parties were given until close of business March 14, 1986, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-5494 on June 5, 1986, to Zaitech Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 50.011, Small Business Investment Companies)

Dated: July 28, 1986.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 86-17562 Filed 8-4-86; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area #6417]

Designation of Disaster Loan Area; New Jersey

The Town of Kearny, New Jersey constitutes a disaster area because of a severe explosion and fire which occurred in the Kearny Industrial Complex on May 26, 1986. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on April 28, 1987, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410

or other locally announced locations. The interest rate for eligible small business concerns without credit available elsewhere is 4 percent and 10.5 percent for eligible small agricultural cooperatives without credit available elsewhere.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: July 28, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86-17561 Filed 8-4-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 974]

Ratification of Convention on Wetlands of International Importance, Especially Waterfowl Habitat; Finding of No Significant Impact

Correction

In FR Doc. 86-16488 beginning on page 26494 in the issue of Wednesday, July 23, 1986, the public notice number in the heading of the document was incorrect and should read as set forth above.

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Approval of Applicant as Trustee; Chase Lincoln First Bank

Notice is hereby given that Chase Lincoln First Bank, N.A., with offices at 20 Clinton Avenue South, Rochester, New York, has been approved as Trustee pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30.

Dated: July 30, 1986.

By Order of the Maritime Administration.

Murray A. Bloom,

Acting Secretary.

[FR Doc. 86-17553 Filed 8-4-86; 8:45 am]

BILLING CODE 4910-81-M

Saint Lawrence Seaway Development Corporation

Establishment of the Advisory Group on Strategic Planning for the St. Lawrence Seaway

Correction

In FR Doc. 86-16274, beginning on page 26200, in the issue of Monday, July 21, 1986, make the following corrections.

1. On page 26200, second column, last paragraph, third line, "Administration" should read "Administrator".

2. On the same page, third column, twenty-second line, "Fednay" should read "Fednav".

3. On the same page, same column, fifth paragraph from the bottom, third line, "of" should read "or".

BILLING CODE 1505-01-M

TENNESSEE VALLEY AUTHORITY

Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms under review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Request for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of

Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395–7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2524, FTS 858–2524

Type of Request: Regular Submission

Title of Information Collection: Interlock/Small Element Water Heater Field Test Telephone Survey

Frequency of Use: Nonrecurring

Type of Affected Public: Individuals or households

Small Businesses or Organizations Affected: No

Federal Budget Functional Category Code: 271

Estimated Number of Annual Responses: 50

Estimated Total Annual Burden Hours: 16.7

Need For and Use of Information: This information is needed to assess the feasibility of small element electric water heaters, and interlocking electric water heater and central air-conditioning systems for reducing peak electrical loads and power production costs.

Dated: July 29, 1986.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 86–17538 Filed 8–4–86; 8:45 am]

BILLING CODE 8120–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 150
Tuesday, August 5, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL COMMUNICATIONS COMMISSION

July 31, 1986.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 7, 1986, which is scheduled to commence at 8:30 A.M., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

General—1—Title: Inquiry into Scrambling of Satellite Television Signals and Access to those Signals by Owners of Home Satellite Dish Antennas. Summary: The Commission will consider whether to adopt a Notice of Inquiry in this proceeding.

General—2—Title: Notice of Proposed Rule Making and Notice of Inquiry to Establish an Automatic Transmitter Identification System for Radio Transmitting Equipment. Proposed Rules—Part 25, Inquiry—All Other Services. Summary: The FCC will consider adopting a proposed rule for video satellite uplinks and an inquiry for all other services concerning a system to automatically identify radio emissions. The benefits of automatic identification to spectrum management will be considered.

Common Carrier—1—Title: In the Matter of Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers. Summary: The Commission will consider Petitions for Reconsideration of the Phase II Order in CC Docket No. 84–800. The Commission will also consider prescriptions of authorized interstate rates of return in Phase III of CC Docket No. 84–800.

Mass Media—1—Title: Amendment of Part 76 of the Commission's Rules Concerning Carriage of Television Broadcast Signals by Cable Television Systems (MM Docket No. 85–349). Summary: The Commission will consider a Report and Order in the matter of mandatory signal carriage rules for cable television systems.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254–7674.

Issued: July 31, 1986.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–17651 Filed 8–1–86; 11:27 am]

BILLING CODE 6712-01-M

2

UNITED STATES INSTITUTE OF PEACE

TIMES AND DATES: 11:00 a.m.–5:00 p.m., Thursday, August 14, 1986; 9:30 a.m.–5:00 p.m., Friday, August 15, 1986.

PLACE: National Trust for Historic Preservation, 1785 Massachusetts Avenue, NW., Washington, DC 20036—2d floor board room.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98–525).

AGENDA (TENTATIVE): Meeting of Board of Directors convened. Consideration of minutes of previous meetings. President's report. Committee meetings and reports. Reports on status of grants programs; the Endowment of the United States Institute of Peace; the Jennings Randolph Program for International Peace; internship program; and essay contest. Consideration of grant applications.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789–5700.

Dated: July 31, 1986.

Robert F. Turner,

President, United States Institute of Peace.

[FR Doc. 86–17626 Filed 8–1–86; 10:17 am]

BILLING CODE 6820-PA-M

Federal Register

Tuesday
August 5, 1986

Part II

Federal Election Commission

11 CFR Part 9001 et al.

Public Financing of Presidential Primary and General Election Candidates; Notice of Proposed Rulemaking

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 106, 9001 Through 9007, 9012, 9031 Through 9039

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission requests comments on proposed revisions to its regulations governing publicly financed Presidential primary and general election candidates. These regulations implement the provisions of 26 U.S.C. Chapters 95 and 96, the "Presidential Election Campaign Fund Act" and the "Presidential Matching Payment Account Act". These statutes establish the requirements for determining when Presidential candidates are eligible for public financing, how such funds may be spent and the Commission's obligation to audit publicly financed campaigns and to seek repayment when appropriate. The proposed rules reflect the Commission's experience in administering this program during the 1984 elections and also seek to anticipate some questions that may arise in 1988. In addition to requesting comments on the specific proposals in this notice, the Commission is seeking comment on several issues that could also be addressed in a revision of these rules. One of these issues is a discussion of the statutory provision governing bank loans, at 2 U.S.C. 431(8)(B)(vii), which could have implications for all candidates and political committees, including Presidential candidates who receive public funding. Further information is provided in the supplementary information which follows.

DATE: Comments must be received on or before September 19, 1986.

ADDRESS: Comments should be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 376–5690 or Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is reviewing its regulations governing public financing of Presidential campaigns, at 11 CFR Parts 9001 *et seq.* and 9031 *et seq.*, in preparation for its administration of this program during the 1988 elections. While the changes under consideration are not as broad in scope as those undertaken for the 1984 elections, there are a number of areas being reviewed for possible revision. The Commission welcomes comments on the issues discussed in this Notice and on other aspects of the public financing process that could be addressed in these regulations. No final decision has been made by the Commission concerning any of the proposals contained in this Notice.

The proposed changes under consideration are intended to improve Commission administration of the matching fund program, to provide some new procedural benefits for candidates, and to clarify in the regulations how certain issues will be addressed during the public financing process. In addition to those areas for which proposed language has been drafted, this Notice raises several questions for possible resolution in the regulations which are not reflected in this draft of the proposed rules.

The following discussion highlights the major issues presented in this draft of the proposed rules. However, it does not address all of the changes. Therefore, commentors are urged to review the text of the attached regulations to insure that they are apprised of all revisions under consideration.

A. Bank Loans

One of the most difficult areas for Commission resolution in the 1984 election cycle concerned bank loans to candidates and political committees. This was a prominent issue with respect to publicly financed candidates, particularly due to the relatively large sums borrowed by such candidates, but was also raised with respect to Congressional candidates. The majority of problems arose in determining when a bank loan should be considered to be in the ordinary course of business in accordance with 2 U.S.C. 431(8)(B)(vii), and 11 CFR 100.7(b)(11) and 100.8(b)(12). In particular, questions have been raised regarding the meaning of the requirement that a bank loan be "made on a basis which assures repayment." The Commission seeks comment on three possible interpretations of this phrase, as well as any other suggested approaches. One interpretation would be to require that a candidate or committee provide some sort of collateral to secure the loan. If the Commission were to move away from the concept of more traditional forms of collateral, a second approach would be to consider a candidate's expectation of future contributions, public funds or perhaps other forms of future income, such as future interest income, as adequate assurance of repayment if the funds were deposited as received in a separate "collateral account". *See, e.g.*, Advisory Opinion 1980–108. The third possible approach would be for the Commission to change its prior interpretation and conclude that the statute only requires that a loan be evidenced by a written instrument and subject to a due date or amortization schedule to be considered made on a basis that assures repayment. In addition, loans would be expected to meet the other statutory requirements, such as that a loan bear the usual and customary interest rate of the lending institution.

These three alternatives raise additional questions for Commission consideration in this area. For example, if a lender requires collateral from a candidate or political committee, how should this apply to publicly financed candidates, who are limited to expending $50,000 of their personal funds (which would include a loan guarantee of this type)? Should the regulations specify what would be considered as acceptable collateral, and if so, what should be included on this list? How should a lender evaluate the ability of a candidate or political committee to raise future contributions, particularly in the case of a first-time candidate or new committee? What other assurance of repayment can a candidate, especially a publicly-funded candidate, offer?

It would be helpful to the Commission's consideration of this issue to also have a better understanding of lenders' experience in lending money to candidates and similar types of debtors. For example, what factors do lending institutions consider when making loans to candidates and political committees? How are these factors similar to, or how do they differ from, those considered when making loans to comparable organizations that rely on contributions for funding? Are there any generalizations that can be made regarding a lender's experience in loaning to political debtors? How do factors such as the rate of repayment by political debtors vs. non-political debtors affect the loan approval process? Are there any special problems in seeking repayment from political debtors, and does the amount of time past the due date after which collection proceedings will be instituted vary between political debtors and non-political debtors?

While the Commission is raising these questions today in the context of public financing, the issues regarding bank loans impact on other political committees and Federal candidates as

well. One issue for Commission resolution, then, is whether to revise the regulations governing bank loans under Title 2 at 11 CFR 100.7(b)(11) and 100.8(b)(12), either as part of this rulemaking or as a separate regulatory revision, since those provisions are applicable to all candidates and committees including publicly financed candidates. A corollary question is whether the Commission should include any regulations in this area as part of the Title 26 regulations or concentrate instead on the Title 2 provisions. The Commission welcomes comments on the issues raised by bank loans and the application of the current regulations in this area to both publicly financed candidates and other candidates and political committees.

B. Debt Settlement and Extensions of Credit

The Commission was faced with several issues during the 1984 election cycle in the area of debt settlement by candidates and their authorized committees. One question concerned the effect of settled debts on the state and overall expenditure limits. Settlement of debts can have the effect of allowing candidates to circumvent the expenditure limits by incurring obligations and receiving the full value of goods and services, but later reducing the amount paid. As set forth in proposed § 9035.1(a)(2), the Commission would continue to count the full amount of the debt against the appropriate limits, rather than the amount for which the debt was settled, unless the candidate or committee can demonstrate that the value of goods or services received was lower than the amount originally owed. If the debt was included as a liability on the candidate's statement of net outstanding campaign obligations and was used as a basis for obtaining further matching funds, the later settlement of that debt could result in a Commission repayment determination for excess entitlement under proposed § 9038.2(b)(1).

Candidate or committee use of credit cards on which the candidate is jointly or solely liable has raised questions regarding the application of the $50,000 limit on expenditures from a candidate's personal funds under § 9035.2. In this situation, the candidate may in effect be extending credit to the campaign if the committee does not pay the balance due by the payment date. The Commission is considering adding new § 9035.2(a)(2) to provide that the use of such credit cards will count against the $50,000 limit if the committee does not pay the outstanding balance of charges on the card by the date payment is required on each billing statement. To avoid this result, the candidate should present the billing statement to the committee on receipt (where bills are not sent directly to the committee) and the committee should pay the outstanding balance in full before a finance charge is incurred.

Debts owed to the campaign have been a third source of questions under the current regulations. A candidate may reflect as an asset on the statement of net outstanding campaign obligations certain accounts receivable based on items such as billings for press reimbursements and deposit refunds. Although no proposed language addressing this issue has been included in this Notice, the Commission welcomes comments on how to determine when the settlement of these accounts or the failure to pursue payment is commercially reasonable and should increase the candidate's entitlement. Although the amount of individual accounts receivable varies, the total amount at issue can be substantial and can have a significant impact on the candidate's ability to receive further matching funds. The Commission does not want to impose undue documentation requirements in this area, but is considering whether to set a certain threshold amount, such as $500 above which a candidate must show that a decision not to pursue full payment of a particular receivable is commercially reasonable. The Commission also encourages comments on what standards could be applied to determine if the candidate's actions are commercially reasonable.

C. Efficient Administration of the Matching Fund Program

The draft rules contain several proposed revisions designed to streamline the Commission's review of matching fund submissions. Some of the proposed changes reflect the Commission's difficulty in meeting certification deadlines in 1984, and its expectation that a record number of candidates will qualify for public funding in 1988, at a time when staff resources may not be increased to meet the demand. For example, proposed § 9033.1(b)(5) would require, as part of the candidates' record production requirements, that candidates agree to provide a copy of a computer magnetic tape containing all information required to be maintained by law, if the campaign maintains its records on computer.

Other proposed changes would save time during the matching fund submission review process by providing that certain problems be addressed initially on an informal basis. Thus, the procedures for making eligibility determinations would be revised under proposed § 9033.4(b) to permit candidates an opportunity to cure deficiencies in their threshold submission before the formal process of finding the candidate ineligible is begun. Again, a similar change is under consideration with respect to the process for reviewing resubmissions under § 9036.5.

Several of the proposed changes would clarify in the regulations some of the documentation and other requirements for matching fund submissions. Some of the 1984 campaigns were unclear about certain requirements not fully set forth in the regulations. Proposed § 9036.1(b) would be revised to include documentation requirements for refunded contributions, joint fundraising proceeds and proceeds from entertainment events in the submission format. That proposed section would also add a requirement that submissions include a certification by the committee treasurer that the information provided is complete and accurate.

In the last election cycle, the Commission developed a new method for obtaining matching funds through letter requests during the candidate's period of eligibility. Letter requests may be submitted on alternate submission dates, and must be followed by full submissions documenting the funds certified in the letter request. On some occasions in the 1984 election cycle, this was not done and the Commission did not receive documentation for all or a portion of the funds certified. The proposed rules, at § 9036.2(b)(2), would clarify the requirement to submit documentation for letter requests on the next submission date and would also propose what action the Commission would take if a candidate fails to satisfy this requirement.

Some questions arose in the 1984 election cycle regarding the dates on which each candidate may make matching fund submissions and resubmissions. Proposed §§ 9036.2(a) and 9036.5(b) would be revised to clarify that each candidate will be notified of his or her submission dates when the Commission determines that the candidate has satisfied the requirements for eligibility under § 9033.4. Candidates would also be notified of the last date on which they may submit contributions for the first time and the last date for making resubmissions, in accordance with proposed §§ 9036.6 and 9036.5(b).

D. Statement of Net Outstanding Campaign Obligations

The Commission is considering several possible revisions regarding the statement of net outstanding campaign obligations that a candidate must submit under § 9034.5. First, the proposed rules would require that all statements submitted under that section contain a certification by the treasurer that the information reported is complete and accurate. As a second proposed change, each statement submitted after the initial statement would be required to include a brief explanation of any changes in the committee's assets and liabilities, to aid the Commission's calculation of the candidate's further entitlement for matching funds. The proposed rule would also expressly exclude from inclusion as liabilities, that could increase the candidate's entitlement, items such as amounts anticipated or determined to be repayable under Part 9038 and any accounts payable for non-qualified campaign expenses.

A final issue raised with respect to the statement of net outstanding campaign obligations concerns the valuation of committee assets. The Commission is proposing to raise the threshold value of capital assets, such as office furniture, that must be included on the statement from $500 to $1,000. Nonetheless, the Commission is also concerned that a substantial amount of committee assets may be liquidated for far less than their fair market value or even disposed of without reimbursement to the committee. Such disposition of assets reduces a committee's ability to pay debts with assets on hand and, thus, increases the candidate's entitlement to further matching funds. To ensure that committees are exercising good faith in using their own resources to raise funds and pay debts, the Commission is considering adding a provision to the regulations that would require documentation of the value of capital and fundraising assets upon their acquisition and disposition. This provision would apply only to assets worth in excess of a stated threshold amount at the time they are acquired, such as $500. It could include a standard depreciation percentage for capital assets, such as 40%, that committees could use to value such assets at the end of the campaign rather than documenting an item's actual fair market value. As in other areas, the committee could claim a higher depreciation percentage for an item if it can document the actual value of that item at the time of disposition. For candidates who become their party's nominee in the general election, a provision such as the one described here could also govern the valuation of and reimbursement for assets transferred from the primary campaign to the general election campaign. The Commission seeks comments on these proposals and welcomes suggestions for alternative approaches in this area.

E. Administrative Costs for Seeking Media Reimbursement

Under the current regulations, at §§ 9004.6 and 9034.6, candidates may seek reimbursement from media personnel for the costs of providing transportation and services to members of the media accompanying the candidate on campaign trips. While the regulations state that the full amount paid by the campaign for services provided to the media are qualified campaign expenses that count against the overall expenditure limit, the candidate may deduct from the expenses counting against this limit the amount of reimbursements received, to the extent the reimbursements do not exceed the actual costs of the services provided. In seeking reimbursement, however, the candidate is permitted to bill each member of the media an amount up to 110% of the actual cost of providing services to that person. The latter provision acknowledges the difficulties of administering a major transportation program in the midst of a campaign. Its intent is to give campaigns some flexibility in their accounting procedures during the campaign period and to determine the total expenditures that will count against the limit once the campaign is over.

Campaigns incur some administrative costs in providing services to the media and later seeking reimbursement for them. The Commission is considering whether to permit campaigns to recoup some of this cost, since these expenses are not wholly directed at furthering the candidate's campaign. Proposed §§ 9004.6(d) and 9034.6(d) would therefore allow candidates to deduct from the overall expenditure limit an amount of reimbursements received equal to 3% of the actual costs of providing such transportation and services, to represent the administrative cost to the committee of these services. It should be noted that this proposal would not permit candidates to seek greater reimbursements from the media; rather, it would only allow them to offset a greater amount of the reimbursements received against the limit.

F. Definition of Qualified Campaign Expense; Post-Ineligibility Entitlement

The current regulations, at § 9034.4(a)(3), permit candidates who are no longer eligible to continue to incur certain expenses, referred to as "winding-down costs," to terminate their committees' activity and comply with the postelection requirements of the Act, such as the mandatory audit and continued reporting. "Winding down costs", which are considered qualified campaign expenses and may be defrayed using federal funds, also include, under the current rules, expenses incurred before the candidate's date of ineligibility if a written commitment to make that expenditure was made before the date of ineligibility.

If a candidate becomes ineligible because he or she fails to receive more than 10% of the vote in two consecutive primary elections, the candidate's date of ineligibility is 30 days after the date of the second primary election. *See* 11 CFR 9033.5(b). This 30 day period can provide a substantial amount of time within which candidates may incur expenditures to continue their campaign after the date of eligibility using public funds, even though they have not met the test of substantial support required by the Act. In 1984, the Commission encountered several situations in which candidates had incurred expenditures before their date of ineligibility for goods and services to be received after that date. These expenditures included obligations for media airtime, as a continuation of the candidate's campaign, and for expenses such as attending the party's national nominating convention.

The Commission is considering revising § 9034.4(a)(3) to clarify that a candidate may not receive winding down costs for terminating his or her campaign unless the candidate's campaign is actually terminating and that expenditures incurred before the date of ineligibility are qualified only if the goods or services are received before the date of ineligibility. *See* proposed § 9034.4 (a) and (b). This proposed revision is not intended to prevent those candidates who wish to continue campaigning from doing so, but it is directed at effectuating the intent of the Matching Payment Account Act to limit the use of public funds by candidates who do not receive a significant portion of the vote. The Commission welcomes comments on this proposal.

G. Petitions for Rehearing; Stays of Repayment Determinations

The proposed rules contain two new sections at 9007.5 and 9038.5 that would set forth guidelines for candidates seeking petitions for rehearing and stays of repayment determinations before the Commission. Under proposed § 9038.5(a), for example, a candidate could request a rehearing following a final determination regarding the candidate's eligibility under § 9033.10, the candidate's entitlement to further matching funds under § 9034.5(f), or the candidate's repayment obligation under § 9038.2. Petitions for rehearing would be limited to new questions of law or fact that would materially alter the Commission's original decision and that could not have been presented during the earlier determination process.

Fed. R. App.P. 18 sets forth a procedure under which persons may apply for a stay of an agency order or decision pending an appeal of that order or decision in the court of appeals. The appellate rules require in most instances, however, that an application for a stay be made first to the agency itself, pursuant to 5 U.S.C. 705. Several candidates have submitted stay applications to the Commission and therefore the Commission is considering including a provision in the regulations to set forth guidelines for these applications. This issue was first raised in an Advance Notice of Proposed Rulemaking concerning Part 111 (50 FR 21077), but the comments on that Notice and Commission discussion of this issue have raised the point that stays are more relevant to publicly financed candidates and would be better addressed in that context.

The proposed language contained in new §§ 9007.5(c) and 9038.5(c) largely follows the standards applied by the Commission in the past, as described in the Advance Notice. These proposed standards could be augmented, however, by the inclusion of proposed §§ 9007.5(c)(3) and 9038.5(c)(3), which would offer further guidance on when the Commission would find that the applicant has shown a strong likelihood of success on the merits of the appeal. This standard would incorporate the decision of the United States Court of Appeals for the District of Columbia in *Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977). While one comment on the Advance Notice urged adoption of a bond requirement in lieu of the standards applied by the Commission to date, no precedent has been discovered thus far indicating either that other agencies have taken this approach or that the appellate courts would view the posting of a bond as an acceptable alternative. Consequently, the Commission has retained the standards previously used for purposes of this Notice. The Commission welcomes further comment on these proposals.

H. Additional Repayment Issues

The Commission is considering two additional issues in the context of repayment obligations. The first of these addresses the relationship between the $50,000 limit on a candidate's expenditures from personal funds under 26 U.S.C. 9004(d) and 9035 and the candidate's ability to make repayments from personal funds. Title 26 conditions a candidate's eligibility for public funding on the candidate's agreement to repay funds as required following an audit, see 26 U.S.C. 9003(a)(3) and 9033(a)(3), and further states that the candidate shall pay any amounts determined to be repayable, see 26 U.S.C. 9007(b) and 9038(b). The statutes make no mention of any limit on the candidate's obligation to repay. Indeed, as this obligation is a key component of the public financing scheme, an argument that Congress would have limited the candidate's ability to make repayment, and to such a relatively small sum, appears difficult to sustain. Moreover, if the $50,000 limit were operative in this fashion, it would be easy for a candidate to avoid all personal responsibility for repayments simply by exhausting the limit in the course of the campaign. Proposed §§ 9003.2(c)(7) and 9035.1(a)(2) would therefore provide that the $50,000 limit does not affect the candidate's ability to make repayments. The Commission welcomes comments on whether this is a point that should be clarified in the regulations as well as any alternative viewpoints on the application of the $50,000 limit.

A second question faced by the Commission is whether there should be some mechanism to determine during audits of Presidential primary candidates when the committee no longer has federal funds in its account and therefore the Commission's examination of committee expenditures for non-qualified campaign expenses should cease. If the Commission were to adopt a cut-off date, it would likely be one after the end of the matching payment period, to ensure that the public financing requirements were not somehow being circumvented. Proposed § 9038.2(b)(2)(iii) describes one method of reaching a cut-off point, by reviewing a committee's expenditures on a last-in, first-out basis following the committee's final matching fund payment. An alternative approach would be to review these expenditures using the assumption that each expenditure is made using a combination of public and private funds in a ratio determined for each candidate. The Commission seeks comments on the appropriateness of making this calculation and on other means that could be used to reach this determination.

I. Filing Dates

The Commission has had difficulty, on occasion, in determining when responses from candidates are due since, under the current rules, the time for filing various documents generally runs from the date of the candidate's receipt of the relevant notice from the Commission. *See e.g.*, 11 CFR 9007.2(c), 9007.2(d), 9033.3(b), 9033.4(b), 9033.6(c), 9033.7(b), 9033.9(b), 9034.5(e), 9038.2 (c) and (d). A mutually ascertainable date would permit both parties greater certainty regarding when candidate responses are due. The proposed rules contained in this Notice would provide that the candidate's time for filing such responses begin to run from the date of service of the Commission's notice. It should be noted that the computation of time under these sections is done in accordance with 11 CFR 111.2. *See, eg.*, 11 CFR 9007.2(e) and 9038.2(e). Comments on other mutually ascertainable dates are encouraged.

J. Other Issues on Which No Language Is Proposed

The Commission has been faced with several other issues during its administration of the public financing program on which it would like comment. No proposed language has been included in this Notice on these issues, but the questions presented are described here to elicit comment on whether the regulations should address any of these issues and, if so, what would be the best approach for the Commission to take.

1. Distinction Between Expenses Incurred and Paid

In several of the audits of 1984 primary candidates, the Commission found expenses incurred that would be considered nonqualified campaign expenses. Although goods or services had been received, these expenses had not been paid at the time of the audit. The Commission was therefore presented with the question of whether to seek repayment on the basis of incurred costs or to wait and make additional repayment determinations as the debts are actually paid. While the

latter alternative could have the effect of discouraging payment of debt, the former option is complicated by the District of Columbia Circuit's opinion in *Kennedy for President* v. *FEC*, 734 F.2d 1558 (D.C. Cir. 1984). In that decision, the court held that the Commission may " 'recoup' only *the federal funds* spent for unqualified expenditures". *Kennedy, supra* at 1565 (emphasis in original). This decision raises the question of the Commission's authority to seek repayment for non-qualified campaign expenses until after they are paid. The Commission seeks comments on whether this question should be addressed in a revision of the public financing regulations and, if so, how the Commission can proceed in a manner which is both consistent with the case law and encourages payment of debts by candidates. It should be noted that the *Kennedy* decision recognizes that the Commission may also seek civil penalties under 2 U.S.C. 437g in an appropriate case.

2. Expenditures Made During the Primary Election That Benefit the Candidate's General Election Campaign

Under § 9003.4 of the current regulations, a general election presidential candidate may make certain expenditures for goods and services prior to the beginning of the general election expenditure report period and the candidate's receipt of federal funds. The ability to make such expenditures is predicated on 26 U.S.C. 9002(11)(B). In the 1984 election cycle, some of these expenditures were made prior to the selection of the candidate as the party's nominee, at the height of the primary campaign. Certain of these expenditures appeared not to be for the purpose of influencing the candidate's nomination, as they occurred after the date of the primary in the relevant states. Others may have been intended to influence both the candidate's nomination and election. This has posed several questions for the Commission. The first question under consideration is whether there should be further clarification in the regulations regarding the kinds of expenditures that may be incurred before the beginning of the general election expenditure report period. If the Commission decided to limit these kinds of expenditures, what should the limits be? A second area for possible revision concerns the effects on the primary campaign of the use of primary election funds for general election purposes. The corollary of this issue is also pertinent, regarding the effect of this activity on the general election campaign. Finally, the Commission is considering what standards should be applied for allocation of expenditures that can be viewed as benefitting both the primary and general election campaigns.

3. Payment of Salary to Candidate

During the 1984 election cycle, a candidate posed the question of whether candidates may be paid a salary by a publicly-financed campaign as a qualified campaign expense. The Commission is considering whether to address this issue in the regulations and seeks comments on whether there are circumstances under which payment of a salary to a publicly financed candidate should be viewed as a qualified campaign expense. Since it is not possible to address all situations in the regulations, the Commission is interested in comment on whether the existing regulations defining qualified and non-qualified campaign expenses, at 11 CFR 9002.11, 9004.4, 9032.9 and 9034.4, provide adequate guidance in this area.

4. Effect of Past Actions as a Publicly Financed Candidate

In 1984, the Commission had to determine whether a publicly financed candidate who had not yet satisfied repayment and civil penalty obligations from the prior election cycle should be deemed eligible for public funding in the current election cycle. As this is an issue that could arise again in future election cycles, the Commission is considering whether to include a provision in the regulations discussing the effect of the candidate's past performance on future eligibility determinations. While it may be appropriate to consider as a factor whether a candidate has repudiated statements made in an earlier candidate agreement that the candidate will make any necessary repayments and pay civil penalties, there will undoubtedly be cases in which a candidate is still pursuing in good faith appropriate appeals from an earlier election cycle. The Commission seeks comments on whether to include a provision in the regulations regarding the candidate's satisfaction of public financing requirements in an earlier election cycle. If the Commission does include this as a factor in eligibility determinations, one important question would be the standard for judging earlier performance under the candidate agreement. Should past performance operate solely to delay a finding of eligibility until the earlier condition is satisfied, or are there circumstances that would warrant complete denial of eligibility? Although the Commission's experience to date has been limited to the question of repayments and civil penalties, the Commission welcomes comment on other aspects that should be considered in this area.

5. Changes in Primary Dates

The statute and regulations provide that a candidate who receives less than 10% of the vote in two consecutive primary elections will no longer be eligible to receive matching funds. See, 26 U.S.C. 9033(c)(1) and 11 CFR 9033.5. For purposes of making this determination, if primaries are conducted in more than one state on the same date, the Commission will apply the highest percentage of votes received by each candidate on that date. A candidate may later re-establish eligibility if he or she receives more than 20% of the vote in a subsequent primary. See 11 CFR 9033.9.

The Commission notes that many states are considering, or have decided, to hold their presidential primaries much earlier in 1988 than was previously the case. It is possible that a large percentage of presidential primaries will be held before the end of April, leaving several months of relative inactivity before the national conventions are held. The Commission seeks comments on what effect this turn of events may have on the continuing eligibility of some candidates and, in particular, the potential impact on the application of the 10% and 20% rules under 11 CFR 9033.5 and 9033.9.

Statutory Authority

26 U.S.C. 9001 *et seq.*

26 U.S.C. 9031 *et seq.*

List of Subjects

11 CFR Parts 9001–9005

Campaign funds, Political candidates, Elections.

11 CFR Part 9006

Campaign funds, Reporting requirements, Political candidates, Elections.

11 CFR Part 9007

Campaign funds, Administrative practice and procedure, Political candidates.

11 CFR Part 9012

Political candidates, Political committees and parties, Elections.

11 CFR Parts 9031–9035

Campaign funds, Political candidates, Elections.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Political candidates.

11 CFR Parts 9037–9039

Campaign funds, Administrative practice and procedure, Political candidates.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities are affected by these proposed rules. Further, any entities affected are already required to comply with the statutory requirements in these areas.

PART 106—[AMENDED]

1. It is proposed to revise the authority citation for Part 106 to read as follows:

Authority: 2 U.S.C. 441a(b), 441a(g), and 438(a)(8).

2. It is proposed to amend 11 CFR Part 106 by revising § 106.2 to read as follows:

§ 106.2 State allocation of expenditures incurred by authorized committees of Presidential primary candidates receiving matching funds.

(a) *General.* (1) This section applies to Presidential primary candidates receiving or expecting to receive federal matching funds pursuant to 11 CFR Parts 9031 *et seq.* Except for expenditures exempted under 11 CFR 106.2(c), expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to a particular State shall be allocated to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid. The candidate shall have the burden of proving that an expenditure should be allocated to a different state than the one determined by the Commission or that all or a portion of an expenditure should be exempt from allocation if the Commission determines that the expenditure is allocable.

(2) Disbursements made prior to the time an individual becomes a candidate for the purpose of determining whether that individual should become a candidate pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1), i.e., payments for testing the waters, shall be allocable expenditures under this section if the individual becomes a candidate.

(b) *Method of allocating expenditures among States.*— (1) *General allocation method.* Unless otherwise specified under 11 CFR 106.2(b)(2), an expenditure incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate in more than one State shall be allocated to each State on a reasonable and uniformly applied basis.

(2) *Specific allocation methods.* Expenditures that fall within the categories listed below shall be allocated based on the following methods. The method used to allocate a category of expenditures shall be based on consistent data for each State to which an allocation is made.

(i) *Media expenditures.*— (A) *Print media.* Except for expenditures exempted under 11 CFR 106.2(c), allocation of expenditures for the publication and distribution of newspaper, magazine and other types of printed advertisements distributed in more than one State, including any commission charged for the purchase of print media, shall be made using relative circulation percentages in each State or an estimate thereof. For purposes of this section, allocation to a particular State will not be required for a publication which is circulated to less than 3% of the total estimated readership of that publication in that State.

(B) *Broadcast media.* Except for expenditures exempted under 11 CFR 106.2(c), expenditures for radio, television and similar types of advertisements purchased in a particular media market that covers more than one State shall be allocated to each State in proportion to the estimated audience. This allocation of expenditures, including any commission charged for the purchase of broadcast media, shall be made using industry market data.

(C) *Refunds for media expenditures.* Refunds for broadcast time or advertisement space, purchased but not used, shall be credited to the States on the same basis as the original allocation.

(D) *Limits on allocation of media expenditures.* No allocation of media expenditures shall be made to any State in which the primary election has already been held.

(ii) *Salaries.* Except for expenditures exempted under 11 CFR 106.2(c), salaries paid to persons working in a particular State for five consecutive days or more, including advance staff, shall be allocated to each State in proportion to the amount of time spent in that State during a payroll period.

(iii) *Intra-State travel and subsistence expenditures.* Travel and subsistence expenditures for persons working in a State for five consecutive days or more shall be allocated to that State in proportion to the amount of time spent in each State during a payroll period. This same allocation method shall apply to intra-state travel and subsistence expenditures of the candidate and his family or the candidate's representatives. For purposes of this section, "subsistence" includes only expenditures for personal living expenses related to a particular individual travelling on committee business, such as food or lodging.

(iv) *Overhead expenditures.*— (A) *Overhead expenditures of State offices.* Except for expenditures exempted under 11 CFR 106.2(c), overhead expenditures of committee offices located in a particular State shall be allocated to that State. For purposes of this section, overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges. "Telephone service base charges" include any regular monthly charges for committee phone service and any phone installation charges but do not include charges for intra-state or inter-state calls.

(B) *Overhead expenditures of regional offices.* Except for expenditures exempted under 11 CFR 106.2(c), overhead expenditures of a committee regional office or any committee office with responsibilities in two or more States shall be allocated to each state on a reasonable and uniformly applied basis. For purposes of this section, overhead expenditures include but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges. "Telephone service base charges include any regular monthly charges for committee phone service and any phone installation charges but do not include charges for intra-state or inter-state calls.

(v) *Telephone service expenditures.*— (A) *Intra-State telephone calls.* Expenditures for all calls made within a particular State shall be allocated to that State.

(B) *Inter-State telephone calls.* Expenditures for telephone calls between two States need not be allocated to any State.

(vi) *Public opinion poll expenditures.* Expenditures incurred for the taking of a public opinion poll covering only one State shall be allocated to that State. Except for expenditures incurred in conducting a nationwide poll,

expenditures incurred for the taking of a public opinion poll covering two or more States shall be allocated to those States based on the number of people interviewed in each State.

(c) *Expenditures exempted from allocation.*— (1) *National campaign expenditures.*— (i) *Operating expenditures.* Expenditures incurred for administrative, staff, and overhead expenditures of the national campaign headquarters need not be allocated to any State. Overhead expenditures shall be defined as in 11 CFR 106.2(b)(2)(iv).

(ii) *National advertising.* Expenditures incurred for advertisements on national networks, national cable or in publications distributed nationwide need not be allocated to any State.

(iii) *Nationwide polls.* Expenditures incurred for the taking of a public opinion poll which is conducted on a nationwide basis need not be allocated to any State.

(2) *Media production costs.* Expenditures incurred for production of media advertising, whether or not that advertising is used in more than one State, need not be allocated to any State.

(3) *Expenditures for transportation and services made available to media.* Expenditures incurred by the candidate's authorized committee(s) to provide transportation and services for media personnel need not be allocated to any State. Reimbursement for such expenditures shall be made in accordance with 11 CFR 9034.6.

(4) *Interstate travel.* Expenditures incurred for inter-state travel costs, such as travel between State campaigns or between State offices and national campaign headquarters, need not be allocated to any State.

(5) *Compliance costs and fundraising expenditures.* An amount equal to 10% of campaign workers' salaries and overhead expenditures in a particular State may be excluded from allocation to that State as an exempt compliance cost. An additional amount equal to 10% of such salaries and overhead expenditures in a particular State may be excluded from allocation to that State as exempt fundraising expenditures, but this exemption shall not apply within 28 calendar days of the primary election as specified in 11 CFR 110.8(c)(2). Any amounts excluded for fundraising expenditures shall be applied against the fundraising expenditure limitation under 11 CFR 100.8(b)(21). If the candidate wishes to claim a larger compliance or fundraising exemption for any person, the candidate shall establish allocation percentages for each individual working in that State. The candidate shall keep detailed records to support the derivation of each percentage in accordance with 11 CFR 106.2(e).

(i) Exempt compliance costs are those legal and accounting costs incurred solely to ensure compliance with 26 U.S.C. 9031 *et seq.*, 2 U.S.C. 431 *et seq.* and 11 CFR Chapter I. If the candidate wishes to claim a larger amount of salaries and overhead expenditures than that permitted by the 10% figure contained in paragraph (c)(5) of this section, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates contains accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs.

(ii) Exempt fundraising expenditures are those expenses associated with the solicitation of contributions. They include printing and postage for solicitations, one-half the cost of preparing matching fund submissions, airtime for fundraising advertisements and the cost of meals and beverages for fundraising receptions or dinners. If the candidate wishes to claim a larger amount of salaries and overhead expenditures than that permitted by the 10% figure contained in paragraph (c)(5) of this section, the Commission's Financial Control and Compliance Manual for Presidential Primary candidates contains accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt fundraising expenditures.

(d) *Reporting.* All expenditures allocated under this section shall be reported on FEC Form 3P, page 3.

(e) *Recordkeeping.* All assumptions and supporting calculations for allocations made under this section shall be documented and retained for Commission inspection. For compliance and fundraising deductions that exceed the 10% exemptions under 11 CFR 106.2(c)(5), such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

3. It is proposed to amend 11 CFR by revising Subchapter F, 11 CFR Parts 9031 through 9039, as follows:

SUBCHAPTER F—PRESIDENTIAL ELECTION CAMPAIGN FUND: PRESIDENTIAL PRIMARY MATCHING FUND

PART 9031—SCOPE

Authority: 26 U.S.C. 9031 and 9039(b).

§ 9031.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Primary Matching Payment Account under 26 U.S.C. 9031 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431–455 of Title 2, United States Code, and regulations prescribed thereunder (11 CFR Parts 100 through 115). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431–455 of Title 2, United States Code, or regulations prescribed thereunder (11 CFR Parts 100 through 115).

PART 9032—DEFINITIONS

Sec.

Authority: 26 U.S.C. 9032 and 9039(b).

§ 9032.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, "authorized committee" means with respect to candidates (as defined at 11 CFR 9032.2) seeking the nomination of a political party for the office of President, any political committee that is authorized by a candidate to solicit or receive contributions or to incur expenditures on behalf of the candidate. The term "authorized committee" includes the candidate's principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate in writing pursuant to 11 CFR 100.3(a)(3).

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same manner provided for at 11 CFR 102.12 or 102.13.

(c) For the purposes of this subchapter, references to the "candidate" and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate's authorized committee(s).

(d) An expenditure by an authorized committee on behalf of the candidate

who authorized the committee cannot qualify as an independent expenditure.

(e) A delegate committee, as defined in 11 CFR 100.5(e)(5), is not an authorized committee of a candidate unless it also meets the requirements of 11 CFR 9032.1(a). Expenditures by delegate committees on behalf of a candidate may count against that candidate's expenditure limitation under the circumstances set forth in 11 CFR 110.14.

§ 9032.2 Candidate.

"Candidate" means an individual who seeks nomination for election to the office of President of the United States. An individual is considered to seek nomination for election if he or she—

(a) Takes the action necessary under the law of a State to qualify for a caucus, convention, primary election or runoff election;

(b) Receives contributions or incurs qualified campaign expenses;

(c) Gives consent to any other person to receive contributions or to incur qualified campaign expenses on his or her behalf; or

(d) Receives written notification from the Commission that any other person is receiving contributions or making expenditures on the individual's behalf and fails to disavow that activity by letter to the Commission within 30 calendar days after receipt of notification.

§ 9032.3 Commission.

"Commission" means the Federal Election Commission, 999 E Street NW., Washington, DC 20463.

§ 9032.4 Contribution.

For purposes of this subchapter, "contribution" has the same meaning given the term under 2 U.S.C. 431(8)(A) and 11 CFR 100.7, except as provided at 11 CFR 9034.4(b)(4).

§ 9032.5 Matching payment account.

"Matching payment account" means the Presidential Primary Matching Payment Account established by the Secretary of the Treasury under 26 U.S.C. 9037(a).

§ 9032.6 Matching payment period.

"Matching payment period" means the period beginning January 1 of the calendar year in which a Presidential general election is held and may not exceed one of the following dates:

(a) For a candidate seeking the nomination of a party which nominates its Presidential candidate at a national convention, the date on which the party nominates its candidate.

(b) For a candidate seeking the nomination of a party which does not make its nomination at a national convention, the earlier of—

(1) The date the party nominates its Presidential candidate, or

(2) The last day of the last national convention held by a major party in the calendar year.

§ 9032.7 Primary election.

(a) "Primary election" means an election held by a State or a political party, including a runoff election, or a nominating convention or a caucus—

(1) For the selection of delegates to a national nominating convention of a political party;

(2) For the expression of a preference for the nomination of Presidential candidates;

(3) For the purposes stated in both paragraphs (1) and (2) of this section; or

(4) To nominate a Presidential candidate.

(b) If separate primary elections are held in a State by the State and a political party, the primary election for the purposes of this subchapter will be the election held by the political party.

§ 9032.8 Political committee.

"Political committee" means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or incurs qualified campaign expenses for the purpose of influencing, or attempting to influence, the nomination of any individual for election to the office of President of the United States.

§ 9032.9 Qualified campaign expense.

(a) "Qualified campaign expense" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred by or on behalf of a candidate or his or her authorized committees from the date the individual becomes a candidate through the last day of the candidate's eligibility as determined under 11 CFR 9033.5;

(2) Made in connection with his or her campaign for nomination; and

(3) Neither the incurrence nor payment of which constitutes a violation of any law of the United States or of any law of any State in which the expense is incurred or paid, or of any regulation prescribed under such law of the United States or of any State, except that any State law which has been preempted by the Federal Election Campaign Act of 1971, as amended, will not be considered a State law for purposes of this subchapter.

(b) An expenditure is made on behalf of a candidate, including a Vice Presidential candidate, if it is made by—

(1) An authorized committee or any other agent of the candidate for purposes of making an expenditure;

(2) Any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate to make the expenditure; or

(3) A committee which has been requested by the candidate, by an authorized committee of the candidate, or by an agent of the candidate to make the expenditure, even though such committee is not authorized in writing.

(c) Expenditures incurred either before the date an individual becomes a candidate or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a). Expenditures described under 11 CFR 9034.4(b) will not be considered qualified campaign expenses.

§ 9032.10 Secretary.

For purposes of this subchapter, "Secretary" means the Secretary of the Treasury.

§ 9032.11 State.

"State" means each State of the United States, Puerto Rico, the Canal Zone, the Virgin Islands, the District of Columbia, and Guam.

PART 9033—ELIGIBILITY FOR PAYMENTS

Sec.

Authority: 26 U.S.C. 9033 and 9039(b).

§ 9033.1 Candidate and committee agreements.

(a) General. (1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall agree in a letter signed by the candidate to the Commission that the candidate and the candidate's authorized committee(s) will comply with the conditions set forth in 11 CFR 9033.1(b). The candidate may submit the letter containing the agreements required by this section at any time after January 1

of the year immediately preceding the Presidential election year.

(2) The Commission will not consider a candidate's threshold submission until the candidate has submitted a candidate agreement that meets the requirements of this section.

(b) *Conditions.* The candidate shall agree that:

(1) The candidate has the burden of proving that disbursements by the candidate or any authorized committee(s) or agents thereof are qualified campaign expenses as defined at 11 CFR 9032.9.

(2) The candidate and the candidate's authorized committee(s) will comply with the documentation requirements set forth in 11 CFR 9033.11.

(3) The candidate and the candidate's authorized committee(s) will provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidate or authorized committee(s) of the candidate and the campaign if requested by the Commission.

(4) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation for matching fund submissions, any books, records (including bank records for all accounts) and supporting documentation and other information that the Commission may request.

(5) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section including those required to be maintained under 11 CFR 9033.11, and other information that the Commission may request. The records provided shall also include production of magnetic computer tapes containing all information required by law to be maintained regarding the committee's receipts and disbursements, if the committee maintains its records on computer. Upon request, documentation explaining the computer systems software capabilities shall also be provided.

(6) The candidate and the candidate's authorized committee(s) will permit an audit and examination pursuant to 11 CFR Part 9038 of all receipts and disbursements including those made by the candidate, all authorized committee(s) and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR Parts 9038 and 9039.

(7) The candidate and the candidate's authorized committee(s) will submit the name and mailing address of the person who is entitled to receive matching fund payments on behalf of the candidate and the name and address of the national or State bank designated by the candidate as a campaign depository as required by 11 CFR Part 103 and 11 CFR 9037.3. Changes in the information required by this paragraph shall not be effective until submitted to the Commission in a letter signed by the candidate or the Committee treasurer.

(8) The candidate and the candidate's authorized committee(s) will prepare matching fund submissions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(9) The candidate and the candidate's authorized committee(s) will comply with the applicable requirements of 2 U.S.C. 431 *et seq.;* 26 U.S.C. 9031 *et seq.* and the Commission's regulations at 11 CFR Parts 100–115, and 9031–9039.

(10) The candidate and the candidate's authorized committee(s) will pay any civil penalties included in a conciliation agreement imposed under 2 U.S.C. 437g against the candidate, any authorized committee of the candidate or any agent thereof.

§ 9033.2 Candidate and committee certifications; threshold submission.

(a) *General.* (1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall make the certifications set forth in 11 CFR 9033.2(b) to the Commission in a written statement signed by the candidate. The candidate may submit the letter containing the required certifications at any time after January 1 of the year immediately preceding the Presidential election year.

(2) The Commission will not consider a candidate's threshold submission until the candidate has submitted candidate certifications that meet the requirements of this section.

(b) *Certifications.* (1) The candidate shall certify that he or she is seeking nomination by a political party to the Office of President in more than one State. For purposes of this section, in order for a candidate to be deemed to be seeking nomination by a political party to the office of President, the party whose nomination the candidate seeks must have a procedure for holding a primary election, as defined in 11 CFR 9032.7, for nomination to that office. For purposes of this section, the term "political party" means an association, committee or organization which nominates an individual for election to the office of President. The fact that an association, committee or organization qualifies as a political party under this section does not affect the party's status as a national political party for purposes of 2 U.S.C. 441a(a)(1)(B) and 441a(a)(2)(B).

(2) The candidate and the candidate's authorized committee(s) shall certify that they have not incurred and will not incur expenditures in connection with the candidate's campaign for nomination, which expenditures are in excess of the limitations under 11 CFR Part 9035.

(3) The candidate and the candidate's authorized committee(s) shall certify:

(i) That they have received matchable contributions totalling more than $5,000 in each of at least 20 States; and

(ii) That the matchable contributions are from individuals who are residents of the State for which their contributions are submitted.

(iii) A maximum of $250 of each individual's aggregate contributions will be considered as matchable contributions for the purpose of meeting the thresholds of this section.

(iv) For purposes of this section, contributions of an individual who maintains residences in more than one State may only be counted toward the $5,000 threshold for the State from which the earliest contribution was made by that contributor.

(c) *Threshold Submission.* To become eligible to receive matching payments, the candidate shall submit documentation of the contributions described in 11 CFR 9033.2(b)(3) to the Commission for review. The submission shall follow the format and requirements of 11 CFR 9036.1.

§ 9033.3 Expenditure limitation certification.

(a) If the Commission makes an initial determination that a candidate or the candidate's authorized committee(s) have knowingly and substantially exceeded the expenditure limitations at 11 CFR Part 9035 prior to that candidate's application for certification, the Commission may make an initial determination that the candidate is ineligible to receive matching funds.

(b) The Commission will notify the candidate of its initial determination, in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate may submit, within 20 calendar days after service of the Commission's notice,

written legal or factual materials, in accordance with 11 CFR 9033.10(b), demonstrating that he or she has not knowingly and substantially exceeded the expenditure limitations at 11 CFR Part 9035.

(c) A final determination of the candidate's ineligibility will be made by the Commission in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d) A candidate who receives a final determination of ineligibility under 11 CFR 9033.3(c) shall be ineligible to receive matching fund payments under 11 CFR 9034.1.

§ 9033.4 Matching payment eligibility threshold requirements.

(a) The Commission will examine the submission made under 11 CFR 9033.1 and 9033.2 and either—

(1) Make a determination that the candidate has satisfied the minimum contribution threshold requirements under 11 CFR 9033.2(c); or

(2) Make an initial determination that the candidate has failed to satisfy the matching payment threshold requirements. The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate may, within 30 calendar days after service of the Commission's notice, satisfy the threshold requirements or submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she has satisfied those requirements. A final determination by the Commission that the candidate has failed to satisfy threshold requirements will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

(b) The Commission will make its examination and determination under this section as soon as practicable. During the Presidential election year, the Commission will generally complete its review and make its determination within 30 business days. If it appears during the review of a candidate's submission that the candidate has not met the threshold requirements, the Commission may halt its review to permit the candidate to cure deficiencies in the submission. The Commission will provide a maximum of two opportunities to cure before proceeding to an initial determination under paragraph (a)(2) of this section.

§ 9033.5 Determination of ineligibility date.

The candidate's date of ineligibility shall be whichever date by operation of 11 CFR 9033.5 (a), (b) or (c) occurs first. After the candidate's date of ineligibility, he or she may only receive matching payments to the extent that he or she has net outstanding campaign obligations as defined in 11 CFR 9034.5.

(a) *Inactive candidate.* The ineligibility date shall be the day on which an individual ceases to be a candidate because he or she is not actively conducting campaigns in more than one State in connection with seeking the Presidential nomination. This date shall be the earliest of—

(1) The date the candidate publicly announces that he or she will not be actively conducting campaigns in more than one State; or

(2) The date the candidate notifies the Commission by letter that he or she is not actively conducting campaigns in more than one State; or

(3) The date which the Commission determines under 11 CFR 9033.6 to be the date that the candidate is not actively seeking election in more than one State.

(b) *Insufficient Votes.* The ineligibility date shall be the 30th day following the date of the second consecutive primary election in which such individual receives less than 10 percent of the number of popular votes cast for all candidates of the same party for the same office in that primary election, if the candidate permitted or authorized his or her name to appear on the ballot, unless the candidate certifies to the Commission at least 25 business days prior to the primary that he or she will not be an active candidate in the primary involved.

(1) The Commission may refuse to accept the candidate's certification if it determines under 11 CFR 9033.7 that the candidate is an active candidate in the primary involved.

(2) For purposes of this paragraph, if the candidate is running in two primary elections in different States on the same date, the highest percentage of votes the candidate receives in any one State will govern. Separate primary elections held in more than one State on the same date are not deemed to be consecutive primaries. If two primary elections are held on the same date in the same State (e.g., a primary to select delegates to a national nominating convention and a primary for the expression of preference for the nomination of candidates for election to the office of President), the highest percentage of votes a candidate receives in either election will govern. If two or more primaries are held in the same State on different dates, the earliest primary will govern.

(c) *End of matching payment period.* The ineligibility date shall be the last day of the matching payment period for the candidate as specified in 11 CFR 9032.6.

(d) *Reestablishment of eligibility.* If the Commission has determined that a candidate is ineligible under 11 CFR 9033.5(a) or (b), the candidate may reestablish eligibility to receive matching funds under 11 CFR 9033.8.

§ 9033.6 Determination of inactive candidacy.

(a) *General.* The Commission may, on the basis of the factors listed in 11 CFR 9033.6(b) below, make a determination that a candidate is no longer actively seeking nomination for election in more than one State at any time after March 1 but before July 1 of the Presidential election year. Upon a final determination by the Commission that a candidate is inactive, that candidate will become ineligible as provided in 11 CFR 9033.5

(b) *Factors considered.* In making its determination of inactive candidacy, the Commission may consider, but is not limited to considering, the following factors:

(1) The frequency and type of public appearances, speeches, and advertisements;

(2) Campaign activity with respect to soliciting contributions or making expenditures for campaign purposes;

(3) Continued employment of campaign personnel or the use of volunteers;

(4) The release of committed delegates;

(5) The candidate urges his or her delegates to support another candidate while not actually releasing committed delegates;

(6) The candidate urges supporters to support another candidate.

(c) *Initial determination.* The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b) and will advise the candidate of the date on which active campaigning in more than one State ceased. The candidate may, within 15 business days after service of the Commission's notice, submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she is actively campaigning in more than one State.

(d) *Final determination.* A final determination of inactive candidacy will be made by the Commission in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.7 Determination of active candidacy.

(a) Where a candidate certifies to the Commission under 11 CFR 9033.5(b) that he or she will not be an active candidate in an upcoming primary, the Commission may, nevertheless, on the basis of factors listed in 11 CFR 9033.6(b), make an initial determination that the candidate is an active candidate in the primary involved.

(b) The Commission will notify the candidate of its initial determination within 10 business days of receiving the candidate's certification under 11 CFR 9033.5(b) or, if the timing of the activity does not permit notice during the 10 day period, as soon as practicable following campaign activity by the candidate in the primary state. The Commission's initial determination will be made in accordance with the procedures outlined in 11 CFR 9033.10(b). Within 10 business days after service of the Commission's notice the candidate may submit, in accordance with 11 CFR 9033.10(b), written legal or factual materials to demonstrate that he or she is not an active candidate in the primary involved.

(c) A final determination by the Commission that the candidate is active will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.8 Reestablishment of eligibility.

(a) *Candidates found to be inactive.* A candidate who has become ineligible under 11 CFR 9033.5(a) on the basis that he or she is not actively campaigning in more than one State may reestablish eligibility for matching payments by submitting to the Commission evidence of active campaigning in more than one State. In determining whether the candidate has reestablished eligibility, the Commission will consider, but is not limited to considering, the factors listed in 11 CFR 9033.6(b). The day the Commission determines to be the day the candidate becomes active again will be the date on which eligibility is reestablished.

(b) *Candidates receiving insufficient votes.* A candidate determined to be ineligible under 11 CFR 9033.5(b) by failing to obtain the required percentage of votes in two consecutive primaries may have his or her eligibility reestablished if the candidate receives at least 20 percent of the total number of votes cast for candidates of the same party for the same office in a primary election held subsequent to the date of the election which rendered the candidate ineligible.

(c) The Commission will make its determination under 11 CFR 9033.8(a) or (b) without requiring the individual to reestablish eligibility under 11 CFR 9033.1 and 2. A candidate whose eligibility is reestablished under this section may submit, for matching payment, contributions received during ineligibility.

§ 9033.9 Failure to comply with disclosure requirements or expenditure limitations.

(a) If the Commission receives information indicating that a candidate or his or her authorized committee(s) has knowingly and substantially failed to comply with the disclosure requirements of 2 U.S.C. 434 and 11 CFR Part 104, or that a candidate has knowingly and substantially exceeded the expenditure limitations at 11 CFR Part 9035, the Commission may make an initial determination to suspend payments to that candidate.

(b) The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate will be given an opportunity, within 20 calendar days after service of the Commission's notice, to comply with the above cited provisions or to submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she is not in violation of those provisions.

(c) Suspension of payments to a candidate will occur upon a final determination by the Commission to suspend payments. Such final determination will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d) (1) A candidate whose payments have been suspended for failure to comply with reporting requirements may become entitled to receive payments if he or she subsequently files the required reports and pays or agrees to pay any civil or criminal penalties resulting from failure to comply.

(2) A candidate whose payments are suspended for exceeding the expenditure limitations shall not be entitled to receive further matching payments under 11 CFR 9034.1.

§ 9033.10 Procedures for initial and final determinations.

(a) *General.* The Commission will follow the procedures set forth in this section when making an initial or final determination based on any of the following reasons.

(1) The candidate has knowingly and substantially exceeded the expenditure limitations of 11 CFR Part 9035 prior to the candidate's application for certification, as provided in 11 CFR 9033.3;

(2) The candidate has failed to satisfy the matching payment threshold requirements, as provided in 11 CFR 9033.4;

(3) The candidate is no longer actively seeking nomination in more than one state, as provided in 11 CFR 9033.6;

(4) The candidate is an active candidate in an upcoming primary despite the candidate's assertion to the contrary, as provided in 11 CFR 9033.7;

(5) The Commission receives information indicating that the candidate has knowingly and substantially failed to comply with the disclosure requirements or exceeded the expenditure limits, as provided in 11 CFR 9033.9; or

(6) The Commission receives information indicating that substantial assets of the candidate's authorized committee have been undervalued or not included in the candidate's statement of net outstanding campaign obligations or that the amount of outstanding campaign obligations has been otherwise overstated in relation to campaign assets, as provided in 11 CFR 9034.5(f).

(b) *Initial determination.* If the Commission makes an initial determination that a candidate may not receive matching funds for one or more of the reasons indicated in 11 CFR 9033.10(a), the Commission will notify the candidate of its initial determination. The notification will give the legal and factual reasons for the determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given an opportunity to comply with the requirements at issue or to submit, within the time provided by the relevant section as referred to in 11 CFR 9033.10(a), written legal or factual materials to demonstrate that the candidate has satisfied those requirements. Such materials may be submitted by counsel if the candidate so desires.

(c) *Final determination.* The Commission will consider any written legal or factual materials timely submitted by the candidate before making its final determination. A final determination that the candidate has failed to satisfy the requirements at issue will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Effect on other determinations.* If the Commission makes an initial determination under this section, but decides to take no further action at that time, the Commission may use the legal and factual bases on which the initial determination was based in any future repayment determination under 11 CFR Part 9038 or 9039. A determination by the Commission under this section may be independent of any Commission decision to institute an enforcement proceeding under 2 U.S.C. 437g.

(e) *Petitions for rehearing.* Following a final determination under this section, the candidate may file a petition for rehearing in accordance with 11 CFR 9038.5(a).

§ 9033.11 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or committee(s) are qualified campaign expenses as defined in 11 CFR 9032.9. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9033.11(b).

(b) *Documentation required.* (1) For disbursements in excess of $200 to a payee, the candidate shall present either:

(i) A receipted bill from the payee that states the purpose of the disbursement, or

(ii) If such a receipt is not available, a cancelled check negotiated by the payee, and

(A) One of the following documents generated by the payee: A bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in 11 CFR 9033.11(b)(1)(ii)(A) are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in 11 CFR 9033.11(b)(1)(i) nor the supporting documentation specified in 11 CFR 9033.11(b)(1)(ii) is available, a cancelled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in 11 CFR 9033.11(b)(1) (i), (ii) or (iii) is not available, the candidate or committee may present a cancelled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office;

(B) Evidence that the disbursement is covered by a preestablished written campaign committee policy, such as a per diem policy.

(2) For all other disbursements the candidate shall present:

(i) A record disclosing the identification of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A cancelled check negotiated by the payee that states the identification of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section,

(i) "Payee" means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $500 or less advanced for travel and/or subsistence and if he or she is the recipient of the goods or services purchased.

(ii) "Purpose" means the identification of the payee, the date and amount of the disbursement, and a description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records, with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, matching fund submissions, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

PART 9034 — ENTITLEMENTS

Sec.

Authority: 26 U.S.C. 9034 and 9039(b).

§ 9034.1 Candidate entitlements.

(a) A candidate who has been notified by the Commission under 11 CFR 9036.1 that he or she has successfully satisfied eligibility and certification requirements is entitled to receive payments in an amount equal to the amount of each matchable campaign contribution received by the candidate, except that a candidate who has become ineligible under 11 CFR 9033.5 may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations as defined in 11 CFR 9034.5.

(b) If on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31 of the Presidential election year provided that on the date of payment there are remaining net outstanding campaign obligations, i.e., the sum of the contributions received on or after the date of ineligibility plus matching funds received on or after the date of ineligibility is less than the candidate's net outstanding campaign obligations. This entitlement will be equal to the lesser of:

(1) The amount of contributions submitted for matching; or

(2) The remaining net outstanding campaign obligations.

(c) A candidate whose eligibility has been reestablished under 11 CFR 9033.8 or who after suspension of payments has met the conditions set forth at 11 CFR 9033.9(d) is entitled to receive payments for matchable contributions for which payments were not received during the ineligibility or suspension period.

(d) The total amount of payments to a candidate under this section shall not exceed 50% of the total expenditure limitation applicable under 11 CFR Part 9035.

§ 9034.2 Matchable contributions.

(a) Contributions meeting the following requirements will be considered matchable campaign contributions.

(1) The contribution shall be a gift of money made: by an individual; by a written instrument and for the purpose of influencing the result of a primary election.

(2) Only a maximum of $250 of the aggregate amount contributed by an individual may be matched.

(3) Before a contribution may be submitted for matching, it must actually be received by the candidate or any of the candidate's authorized committees and deposited in a designated campaign depository maintained by the candidate's authorized committee.

(4) The written instrument used in making the contribution must be dated, physically received and deposited by the candidate or authorized committee on or after January 1 of the year immediately preceding the calendar year of the Presidential election, but no later than December 31 following the matching payment period as defined under 11 CFR 9032.6. Donations received by an individual who is testing the waters pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1) may be matched when the individual becomes a candidate if such donations meet the requirements of this section.

(b) For purposes of this section, the term "written instrument" means a check written on a personal, escrow or trust account representing or containing the contributor's personal funds; a money order; or any similar negotiable instrument.

(c) The written instrument shall be: payable on demand; and to the order of, or specifically endorsed without qualification to, the Presidential candidate, or his or her authorized committee. The written instrument shall contain: The full name and signature of the contributor(s); the amount and date of the contribution; and the mailing address of the contributor(s).

(1) In cases of a check drawn on a joint checking account, the contributor is considered to be the owner whose signature appears on the check.

(i) To be attributed equally to other joint tenants of the account, the check or other accompanying written document shall contain the signature(s) of the joint tenant(s). If a contribution on a joint account is to be attributed other than equally to the joint tenants, the check or other written documentation shall also indicate the amount to be attributed to each joint tenant.

(ii) In the case of a check for a contribution attributed to more than one person, where it is not apparent from the face of the check that each contributor is a joint tenant of the account, a written statement shall accompany the check stating that the contribution was made from each individual's personal funds in the amount so attributed and shall be signed by each contributor.

(2) Contributions in the form of checks drawn on an escrow or trust account are matchable contributions, provided that:

(i) The contributor has equitable ownership of the account; and

(ii) The check is accompanied by a statement, signed by each contributor to whom all or a portion of the contribution is being attributed, together with the check number, amount and date of contribution. This statement shall specify that: the contributor has equitable ownership of the account and the account represents the personal funds of the contributor.

(3) Contributions in the form of checks written on partnership accounts or accounts of unincorporated associations or businesses are matchable contributions, so long as:

(i) The check is accompanied by a statement, signed by each contributor to whom all or a portion of the contribution is being attributed, together with the check number, amount and date of contribution. This statement shall specify that the contribution is made with the contributor's personal funds and that the account on which the contribution is drawn is not maintained or controlled by an incorporated entity; and

(ii) The aggregate amount of the contributions drawn on a partnership or unincorporated association or business does not exceed $1,000 to any one Presidential candidate seeking nomination.

(iii) No portion of the contribution may be attributed to any person who is not a partner or member of the unincorporated association or business, including any spouse who is not a partner or member.

(4) Contributions in the form of money orders, cashier's checks, traveller's checks, or other similar negotiable instruments are matchable contributions, provided that:

(i) At the time it is initially submitted for matching, such instrument is signed by each contributor and is accompanied by a statement which specifies that the contribution was made in the form of a money order, cashier's check, traveller's check, or other similar negotiable instrument, with the contributor's personal funds;

(ii) Such statement identifies the date and amount of the contribution made by money order, cashier's check, traveller's check, or other similar negotiable instrument, the check or serial number, and the name of the issuer of the negotiable instrument; and

(iii) Such statement is signed by each contributor.

(5) Contributions in the form of the purchase price paid for the admission to any activity that primarily confers private benefits in the form of entertainment to the contributor (i.e., concerts, motion pictures) are matchable. The promotional material and tickets for the event shall clearly indicate that the ticket purchase price represents a contribution to the Presidential candidate.

(6) Contributions in the form of a purchase price paid for admission to an activity that is essentially political are matchable. An "essentially political" activity is one the principal purpose of which is political speech or discussion, such as the traditional political dinner or reception.

(7) Contributions received from a joint fundraising activity conducted in accordance with 11 CFR 9034.8 are matchable, provided that such contributions are accompanied by a copy of the joint fundraising agreement when they are submitted for matching.

(8) Written instruments made payable for more than $1000 are matchable only if:

(i) The contribution meets the requirements of 11 CFR 104.8(d) regarding a written statement signed by all contributors indicating the amount to be attributed to each; or

(ii) The contribution is submitted with documentation showing that the excessive portion of the contribution was refunded.

§ 9034.3 Non-matchable contributions.

A contribution to a candidate other than one which meets the requirements of 11 CFR 9034.2 is not matchable. Contributions which are not matchable include, for example:

(a) In-kind contributions of real or personal property;

(b) A subscription, loan, advance, or deposit of money, or anything of value;

(c) A contract, promise, or agreement, whether or not legally enforceable, such as a pledge card or credit card transaction, to make a contribution for any such purposes (but a gift of money by written instrument is not rendered unmatchable solely because the contribution was preceded by a promise or pledge);

(d) Funds from a corporation, labor organization, government contractor, political committee as defined in 11 CFR 100.5 or any group of persons other than those under 11 CFR 9034.2(c)(3);

(e) Contributions which are made or accepted in violation of 2 U.S.C. 441a, 441b, 441c, 441e, 441f, or 441g;

(f) Contributions in the form of a check drawn on the account of a committee, corporation, union or government contractor even though the funds represent personal funds earmarked by a contributing individual to a Presidential candidate;

(g) Contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value, such as a watch;

(h) Contributions in the form of the purchase price paid for or otherwise induced by a chance to participate in a raffle, lottery, or a similar drawing for valuable prizes;

(i) Contributions which are made by persons without the necessary donative intent to make a gift or made for any purpose other than to influence the result of a primary election; and

(j) Contributions of currency of the United States or currency of any foreign country.

§ 9034.4 Use of contributions and matching payments.

(a) *Qualified campaign expenses.*—(1) *General.* Except as provided in 11 CFR 9034.4(b)(3), all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.

(2) *Testing the waters.* Even though incurred prior to the date an individual becomes a candidate, payments made for the purpose of determining whether an individual should become a candidate, such as those incurred in conducting a poll, shall be considered qualified campaign expenses if the individual subsequently becomes a candidate and shall count against that candidate's limits under 2 U.S.C. 441a(b). See 11 CFR 100.8(b)(1).

(3) *Winding down costs.* The following costs shall be considered qualified campaign expenses:

(i) Costs associated with the termination of political activity, if the candidate is no longer seeking nomination or election, such as the costs of complying with the postelection requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies; or

(ii) Costs incurred before the candidate's date of ineligibility, for goods and services to be received before the candidate's date of ineligibility, for which written arrangement or commitment was made on or before the candidate's date of ineligibility.

(4) *Taxes.* Federal income taxes paid by the committee on non-exempt function income, such as interest, dividends and sale of property, shall be considered qualified campaign expenses. These expenses shall be subject to the overall expenditure limits of 11 CFR 9035.1(a) but shall not count against the state expenditure limits under 11 CFR 106.2.

(b) *Non-qualified campaign expenses.*—(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR Part 9035 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to the limitations in accordance with 11 CFR 9035.1(a)(2).

(3) *Post-ineligibility expenditures.* Any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR 9034.4(a)(3). Any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility are not qualified campaign expenses.

(4) *Civil or criminal penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from contributions or matching payments. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR Part 104.

(c) *Transfers to other campaigns.* If a candidate has received matching funds and is simultaneously seeking nomination or election to another Federal office, no transfer of funds between his or her principal campaign committees or authorized committees may be made. See 2 U.S.C. 441a(a)(5)(C) and 11 CFR 110.3(a)(2)(v).

§ 9034.5 Net outstanding campaign obligations.

(a) Within 15 calendar days after the candidate's date of ineligibility, as determined under 11 CFR 9033.5, the candidate shall submit a statement of net outstanding campaign obligations. Each statement filed under this section shall include a signed certification by the committee treasurer that the information contained in the statement is complete and accurate. The candidate's net outstanding campaign obligations under this section equal the difference between paragraphs (a) (1) and (2):

(1) The total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility as determined under 11 CFR 9033.5, plus estimated necessary winding down costs as defined under 11 CFR 9034.4(a)(3), less

(2) The total of:

(i) Cash on hand as of the close of business on the last day of eligibility (including all contributions dated on or before that date whether or not submitted for matching; currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveller's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value);

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the campaign in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(b) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for nonqualified campaign expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR Part 9038.

(c) (1) *Capital assets.* For purposes of this section, the term "capital asset" means any property used in the operation of the campaign whose value on the last day of the candidate's eligibility exceeds $1000. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9034.5(c)(2). The value of a capital asset shall be the fair market value on the date of ineligibility or on the date the item is acquired if acquired after the date of ineligibility.

(2) *Other assets.* The term "other assets" means any property acquired by the campaign for use in raising funds or as collateral for campaign loans. "Other assets" must be included on the

candidate's statement of net outstanding campaign obligations if the aggregate value of such assets exceeds $5000. The value of "other assets" shall be determined by the fair market value of each item on the candidate's date of ineligibility or on the date the item is acquired if acquired after the date of ineligibility.

(d) Contributions received from joint fundraising activities conducted under 11 CFR 9034.8 may be used to pay a candidate's outstanding campaign obligations.

(1) Such contributions shall be deemed monies available to pay outstanding campaign obligations as of the date these funds are received by the fundraising representative committee and shall be included in the candidate's statement of net outstanding campaign obligations.

(2) The amount of money deemed available to pay a candidate's net outstanding campaign obligations will equal either—

(i) An amount calculated on the basis of the predetermined allocation formula, as adjusted for 2 U.S.C. 441a limitations; or

(ii) If a candidate receives an amount greater than that calculated under 11 CFR 9034.5(d)(2)(i), the amount actually received.

(e) The candidate shall submit a revised statement of net outstanding campaign obligations with each submission for matching funds payments filed after the candidate's date of ineligibility. The revised statement shall reflect the financial status of the campaign as of the close of business on the last business day preceding the date of submission for matching funds. The revised statement shall also contain a brief explanation of each change in the committee's assets and obligations from the previous statement.

(f) (1) If the Commission receives information indicating that substantial assets of the candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding campaign obligations has been otherwise overstated in relation to campaign assets, the Commission may decide to temporarily suspend further matching payments pending a final determination whether the candidate is entitled to receive all or a portion of the matching funds requested.

(2) In making a determination under 11 CFR 9034.5(f)(1), the Commission will follow the procedures for initial and final determinations under 11 CFR 9033.10 (b) and (c). The Commission will notify the candidate of its initial determination within 15 business days after receipt of the candidate's statement of net outstanding campaign obligations. Within 15 business days after service of the Commission's notice, the candidate may submit written legal or factual materials to demonstrate that he or she has net outstanding campaign obligations that entitle the campaign to further matching payments.

(3) If the candidate demonstrates that the amount of outstanding campaign obligations still exceeds campaign assets, he or she may continue to receive matching payments.

(4) Following a final determination under this section, the candidate may file a petition for rehearing in accordance with 11 CFR 9038.5(a).

§ 9034.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, and typewriters) made available to media personnel, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitations of 11 CFR 9035.1(a).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each individual shall not exceed either: the individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

(d) (1) The committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9035.1(a) the amount of reimbursements received for the actual cost of transportation and services provided under paragraph (a). The committee may also deduct from the overall expenditure limitation an amount of reimbursements received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services to media personnel and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts paid by the committee for transportation, services and administrative costs for which no reimbursement is received will be considered qualified campaign expenses subject to the overall expenditure limitation in accordance with paragraph (a).

(2) For the purposes of this section, "administrative costs" shall include all costs incurred by the committee for making travel arrangements for media personnel and for seeking reimbursements, whether performed by committee staff or independent contractors.

§ 9034.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR Part 106, expenditures for travel relating to the campaign of a candidate seeking nomination for election to the office of President by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9034.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b) (1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses will be treated as qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, travelling for campaign purposes will be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers travelling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 9034.8 Joint fundraising.

(a) *General.*—(1) *Permissible participants.* Presidential primary candidates who receive matching funds under this subchapter may engage in joint fundraising with other candidates, political committees or unregistered committees or organizations.

(2) *Use of funds.* Contributions received as a result of a candidate's participation in a joint fundraising activity under this section may be—

(i) Submitted for matching purposes in accordance with the requirements of 11 CFR 9034.2 and the Federal Election Commission's Guideline for Presentation in Good Order;

(ii) Used to pay a candidate's net outstanding campaign obligations as provided in 11 CFR 9034.5;

(iii) Used to defray qualified campaign expenses;

(iv) Used to defray exempt legal and accounting costs; or

(v) If in excess of a candidate's net outstanding campaign obligations or expenditure limit, used in any manner consistent with 11 CFR 113.2, including repayment of funds under 11 CFR Part 9038.

(b) *Fundraising representatives.*—(1) *Establishment or selection of fundraising representative.* The participants in a joint fundraising effort under this section shall either establish a separate committee or select a participating committee, to act as fundraising representative for all participants. The fundraising representative shall be a reporting political committee and an authorized committee of each candidate.

(2) *Separate fundraising committee as fundraising representative.* A separate fundraising committee established by the participants to act as fundraising representative for all participants shall—

(i) Be established as a reporting political committee under 11 CFR 100.5;

(ii) Collect contributions;

(iii) Pay fundraising costs from gross proceeds and funds advanced by participants; and

(iv) Disburse net proceeds to each participant.

(3) *Participating committee as fundraising representative.* A participant selected to act as fundraising representative for all participants shall—

(i) Be a political committee as defined in 11 CFR 100.5;

(ii) Collect contributions; however, other participants may also collect contributions and then forward them to the fundraising representative as required by 11 CFR 102.8;

(iii) Pay fundraising costs from gross proceeds and funds advanced by participants; and

(iv) Disburse net proceeds to each participant.

(4) *Independent fundraising agent.* The participants or the fundraising representative may hire a commercial fundraising firm or other agent to assist in conducting the joint fundraising activity. In that case, however, the fundraising representative shall still be responsible for ensuring that the recordkeeping, reporting and documentation requirements set forth in this subchapter are met.

(c) *Joint fundraising procedures.* Any joint fundraising activity under this section shall be conducted in accordance with the following requirements:

(1) *Written agreement.* The participants in a joint fundraising activity shall enter into a written agreement, whether or not all participants are political committees under 11 CFR 100.5. The written agreement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The participants shall also use the formula to allocate the expenses incurred for the fundraising activity. The fundraising representative shall retain the written agreement for a period of three years and shall make it available to the Commission on request.

(2) *Funds advanced for fundraising costs.* (i) Except as provided in 11 CFR 9034.8(c)(2)(ii), the amount of funds advanced by each participant for fundraising costs shall be in proportion to the allocation formula agreed upon under 11 CFR 9034.8(c)(1).

(ii) A participant may advance more than its proportionate share of the fundraising costs; however, the amount advanced which is in excess of the participant's proportionate share shall not exceed the amount that participant could legally contribute to the remaining participants. See 11 CFR 102.12(c)(2) and Part 110.

(3) *Fundraising notice.* In addition to any notice required under 11 CFR 110.11, a joint fundraising notice shall be included with every solicitation for contributions.

(i) This notice shall include the following information:

(A) The names of all committees participating in the joint fundraising activity whether or not such committees are political committees under 11 CFR 100.5;

(B) The allocation formula to be used for distributing joint fundraising proceeds;

(C) A statement informing contributors that, notwithstanding the stated allocation formula, they may designate their contributions for a particular participant or participants; and

(D) A statement informing contributors that the allocation formula may change if a contributor makes a contribution which would exceed the amount that contributor may give to any participant.

(ii) If one or more participants engage in the joint fundraising activity solely to satisfy outstanding debts, the notice shall also contain a statement informing contributors that the allocation formula may change if a participant receives sufficient funds to pay its outstanding debts.

(4) *Separate depository account.* (i) The participants or the fundraising representative shall establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds. All contributions deposited into the separate depository account must be permissible under Title 2, United States Code. Each political committee shall amend its Statement of Organization to reflect the account as an additional depository.

(ii) The fundraising representative shall deposit all joint fundraising proceeds in the separate depository account within ten days of receipt as required by 11 CFR 103.3. The fundraising representative may delay distribution of the fundraising proceeds to the participants until all contributions are received and all expenses are paid.

(iii) For contribution reporting and limitation purposes, the date of receipt of a contribution by a participating political committee is the date that the contribution is received by the fundraising representative. The fundraising representative shall report contributions in the reporting period in which they are received. Participating political committees shall report joint fundraising proceeds in accordance with 11 CFR 9034.8(c)(9) when such funds are received from the fundraising representative.

(5) *Recordkeeping requirements.* (i) The fundraising representative and participating committees shall screen all contributions received to insure that the prohibitions and limitations of 11 CFR Parts 110 and 114 are observed. Participating political committees shall make their contributor records available to the fundraising representative to enable the fundraising representative to carry out its duty to screen contributions.

(ii) The fundraising representative shall collect and retain contributor information with regard to gross proceeds as required under 11 CFR 102.8 and shall also forward such information to participating political committees.

(iii) The fundraising representative shall retain the records required under 11 CFR 9033.11 regarding fundraising disbursements for a period of three years. Commercial fundraising firms or agents shall forward such information to the fundraising representative.

(6) *Contribution limitations.* Except to the extent that the contributor has previously contributed to any of the participants, a contributor may make a contribution to the joint fundraising effort which contribution represents the total amount that the contributor could contribute to all of the participants under the applicable limits of 11 CFR 110.1 and 110.2.

(7) *Allocation of gross proceeds.* (i) The fundraising representative shall allocate proceeds according to the formula stated in the fundraising agreement. Funds may not be distributed or reallocated so as to maximize the matchability of the contributions.

(ii) If distribution according to the allocation formula extinguishes the debts of one or more participants or if distribution under the formula results in a violation of the contribution limits of 11 CFR 110.1(a), the fundraising representative may reallocate the surplus funds. Candidates seeking to extinguish outstanding debts shall not reallocate in reliance on the receipt of matching funds to pay the remainder of their debts; rather, all funds to which a participant is entitled under the allocation formula shall be deemed funds available to pay the candidate's outstanding campaign obligations as provided in 11 CFR 9034.5(c).

(iii) Reallocation shall be based upon the remaining participants' proportionate shares under the allocation formula. If reallocation results in a violation of a contributor's limit under 11 CFR 110.1, the fundraising representative shall return to the contributor the amount of the contribution that exceeds the limit.

(iv) Earmarked contributions which exceed the contributor's limit to the designated participant under 11 CFR Part 110 may not be reallocated by the fundraising representative without the written permission of the contributor.

(8) *Allocation of expenses and distribution of net proceeds.* (i) If participating committees are not affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity and are not committees of the same political party:

(A) After gross contributions are allocated among the participants under 11 CFR 9034.8(c)(7), the fundraising representative shall calculate each participant's share of expenses based on the percentage of the total receipts each participant had been allocated. To calculate each participant's net proceeds, the fundraising representative shall subtract the participant's share of expenses from the amount that participant has been allocated from gross proceeds.

(B) A participant may only pay expenses on behalf of another participant subject to the contribution limits of 11 CFR Part 110.

(ii) If participating committees are affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity or if participants are party committees of the same political party, expenses need not be allocated among those participants. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the unregistered organization to become a political committee.

(iii) Payment of expenses may be made from gross proceeds by the fundraising representative.

(9) *Reporting of Receipts and Disbursements.*—(i) *Reporting receipts.* (A) The fundraising representative shall report all funds received in the reporting period in which they are received. Each Schedule A filed by the fundraising representative under this section shall clearly indicate that the contributions reported on that schedule represent joint fundraising proceeds.

(B) After distribution of net proceeds, each participating political committee shall report its share of net proceeds received as a transfer-in from the fundraising representative. Each participating political committee shall also file a memo Schedule A itemizing its share of gross receipts as contributions from original contributors to the extent required under 11 CFR 104.3(a).

(ii) *Reporting disbursements.* The fundraising representative shall report all disbursements in the reporting period in which they are made.

§ 9034.9 Sale of assets acquired for fundraising purposes.

(a) *General.* A candidate may sell assets donated to the campaign or otherwise acquired for fundraising purposes (see 11 CFR 9034.5(b)(2)), subject to the limitations and

prohibitions of Title 2, United States Code and 11 CFR Parts 110 and 114.

(b) *Sale after end of matching payment period.* A candidate whose outstanding debts exceed his or her cash on hand after the end of the matching payment period as determined under 11 CFR 9032.6 may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public, provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of Title 2, United States Code and 11 CFR Parts 110 and 114.

PART 9035—EXPENDITURE LIMITATIONS

Sec.
9035.1 Campaign expenditure limitation.
9035.2 Limitation on expenditures from personal or family funds.

Authority: 26 U.S.C. 9035 and 9039(b).

§ 9035.1 Campaign expenditure limitation.

(a) (1) No candidate or his or her authorized committee(s) shall knowingly incur expenditures in connection with the candidate's campaign for nomination, which expenditures, in the aggregate, exceed $10,000,000 (as adjusted under 2 U.S.C. 441a(c)), except that the aggregate expenditures by a candidate in any one State shall not exceed the greater of: 16 cents (as adjusted under 2 U.S.C. 441a(c)) multiplied by the voting age population of the State (as certified under 2 U.S.C. 441a(e)); or $200,000 (as adjusted under 2 U.S.C. 441a(c)).

(2) The Commission will calculate the amount of expenditures attributable to the overall expenditure limit or to a particular state using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were settled and paid, unless the committee can demonstrate that the lower amount actually paid reflects the true value of the goods and services received.

(b) Each candidate receiving or expecting to receive matching funds under this subchapter shall also allocate his or her expenditures in accordance with the provisions of 11 CFR 106.2.

(c) A candidate may exclude from the overall expenditure limitation of 11 CFR 9035.1 an amount equal to 10% of salaries and overhead expenditures of his or her national campaign headquarters and state offices as an exempt legal and accounting compliance cost under 11 CFR 100.8(b)(15). For purposes of this section overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies, and telephone base service charges. An additional amount of 10% of such salaries and overhead expenditures may be excluded from the overall expenditure limitation of 11 CFR 9035.1 as exempt fundraising expenditures but this exemption shall not apply within 28 days of the primary election as specified in 11 CFR 110.8(c)(2). Any amount excluded for fundraising expenditures shall be applied against the fundraising expenditure limitation under 11 CFR 100.8(b)(21). If the candidate wishes to claim a larger compliance or fundraising exemption for any person, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(1) Exempt compliance costs are those legal and accounting costs incurred solely to ensure compliance with 26 U.S.C. 9031 *et seq.*, 2 U.S.C. 431 *et seq.*, and 11 CFR Chapter I. Exempt fundraising expenses are those expenses associated with the solicitation of contributions. They include printing and postage for solicitations, one-half the cost of preparing matching fund submissions, air time for fundraising advertisements and the cost of meals and beverages for fundraising receptions or dinners.

(2) If the candidate wishes to claim a larger amount of salaries and overhead expenditures as a compliance or fundraising exemption than that permitted by the 10% figure contained in paragraph (c), the Commission's Financial Control and Compliance Manual contains accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance or fundraising costs.

(d) The expenditure limitations of 11 CFR 9035.1 shall not apply to a candidate who does not receive matching funds at any time during the matching payment period.

§ 9035.2 Limitation on expenditures from personal or family funds

(a)(1) No candidate who has accepted matching funds shall knowingly make expenditures from his or her personal funds, or funds of his or her immediate family, in connection with his or her campaign for nomination for election to the office of President which exceed $50,000, in the aggregate. This section shall not operate to prohibit any member of the candidate's immediate family from contributing his or her personal funds to the candidate, subject to the limitations of 11 CFR Part 110. The provisions of this section also shall not limit the candidate's liability for, nor the candidate's ability to pay, any repayments required under 11 CFR Part 9038.

(2) Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the balance due is not paid by the date on which payment must be made according to the terms of the credit card agreement.

(b) For purposes of this section, the term "immediate family" means a candidate, spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(c) For purposes of this section, "personal funds" has the same meaning as specified in 11 CFR 110.10.

PART 9036—REVIEW OF SUBMISISON AND CERTIFICATION OF PAYMENTS BY COMMISSION

Sec.
9036.1 Threshold submission.
9036.2 Additional submissions for matching fund payments.
9036.3 Submission errors and insufficient documentation.
9036.4 Commission review of submissions.
9036.5 Resubmissions.
9036.6 Continuation of certification.

Authority: 26 U.S.C. 9036 and 9039(b).

§ 9036.1 Threshold submission.

(a) *Time for submission of Threshold Submission.* At any time after January 1 of the year immediately preceding the Presidential election year, the candidate may submit a threshold submission for matching fund payments in accordance with the format for such submissions set forth in 11 CFR 9036.1(b). The threshold submission shall also include a certification signed by the committee treasurer that the information contained in the submission is complete and accurate. The candidate may submit the threshold submission simultaneously with or subsequent to his or her submission of the candidate agreement and certifications required by 11 CFR 9033.1 and 9033.2.

(b) *Format for threshold submission.* (1) For each State in which the candidate certifies that he or she has met the requirements of the certifications in 11 CFR 9033.2(b), the

candidate shall submit an alphabetical list of contributors showing:

(i) Each contributor's full name and residential address;

(ii) The occupation and name of employer for individuals whose aggregate contributions exceed $200 in the calendar year;

(iii) The date of deposit of each contribution into the designated campaign depository;

(iv) The full dollar amount of each contribution submitted for matching purposes;

(v) The matchable portion of each contribution submitted for matching purposes;

(vi) The aggregate amount of all matchable contributions from that contributor submitted for matching purposes;

(vii) A notation indicating which contributions were received as a result of joint fundraising activities.

(2) The candidate shall submit a full-size photocopy of each check or written instrument and of supporting documentation in accordance with 11 CFR 9034.2 for each contribution that the candidate submits to establish eligibility for matching funds. For purposes of the threshold submission, the photocopies shall be segregated alphabetically by contributor within each State, and shall be accompanied by and referenced to copies of the relevant deposit slips.

(3) The candidate shall submit bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statements, which indicate that the contributions submitted were deposited into a designated campaign depository.

(4) For each State in which the candidate certifies that he or she has met the requirements to establish eligibility, the candidate shall submit a listing, alphabetically by contributor, of all checks returned by the bank to date as unpaid (e.g., stop payments, non-sufficient funds) regardless of whether the contribution was submitted for matching. This listing shall be accompanied by a full-size photocopy of each unpaid check, and copies of the associated debit memo and bank statement.

(5) For each state in which the candidate certifies that he or she has met the requirements to establish eligibility, the candidate shall submit a listing, alphabetically by contributor, of all refunded contributions, regardless of whether the contribution was submitted for matching. This listing shall include the date and amount of the original contribution and the amount of the refund.

(6) If contributions are included in the submission which were received as a result of joint fundraising, the candidate shall submit a copy of the joint fundraising agreement and the solicitation material for the event. Any contributions attributed to the candidate in a higher percentage than that specified in the joint fundraising agreement shall be accompanied by documentation showing the re-allocation and the basis or reason for the re-allocation.

(7) If contributions received as a result of entertainment events are included in the submission, the candidate shall submit a copy of the promotional material and a copy of each ticket at each price. The promotional material and tickets for the event shall clearly indicate that the ticket purchase price represents a contribution to the Presidential candidate.

(8) The candidate shall submit all contributions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(9) Contributions that are not submitted in compliance with this section shall not count toward the threshold amount.

(c) *Threshold certification by Commission.* (1) After the Commission has determined under 11 CFR 9033.4 that the candidate has satisfied the eligibility and certification requirements of 11 CFR 9033.1 and 9033.2, the Commission will notify the candidate in writing that the candidate is eligible to receive primary matching fund payments as provided in 11 CFR Part 9034.

(2) If the Commission makes a determination of a candidate's eligibility under 11 CFR 9036.1(a) in a Presidential election year, the Commission shall certify to the Secretary, within 10 calendar days after the Commission has made its determination, the amount to which the candidate is entitled.

(3) If the Commission makes a determination of a candidate's eligibility under 11 CFR 9036.1(a) in the year preceding the Presidential election year, the Commission will notify the candidate that he or she is eligible to receive matching fund payments; however, the Commission's determination will not result in a payment of funds to the candidate until after January 1 of the Presidential election year.

§ 9036.2 Additional submissions for matching fund payments.

(a) *Time for submission of additional submissions.* The candidate may submit additional submissions for payments to the Commission on the dates designated by the Commission for that candidate. The Commission will notify the candidate of the dates so designated when the candidate's eligibility is determined under 11 CFR 9033.4.

(b) *Format for additional submissions.* The candidate may obtain additional matching fund payments subsequent to the Commission's threshold certification and payment of primary matching funds to the candidate by filing an additional submission for payment. All additional submissions for payments filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order and shall include a signed certification by the committee treasurer that the information contained in the submission is complete and accurate.

(1) The first submission for matching funds following the candidate's threshold submission shall contain all the matchable contributions included in the threshold submission and any additional contributions to be submitted for matching in that submission. This submission shall contain all the information required for the threshold submission except that:

(i) The candidate is not required to resubmit the candidate agreement and certifications of 11 CFR 9033.1 and 9033.2;

(ii) The candidate is required to submit an alphabetical list of contributors, but not segregated by State as required in the threshold submission;

(iii) The candidate is required to submit a listing, alphabetical by contributor, of all checks returned unpaid, but not segregated by State as required in the threshold submission;

(iv) The candidate is required to submit a listing, alphabetical by contributor, of all refunded contributions, but not segregated by State as required in the threshold submission;

(v) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed $200 in the calendar year, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432 (c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

(vi) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list.

(2) Following the first submission under 11 CFR 9036.2(b)(1), candidates may request additional matching funds on dates prescribed by the Commission by making a letter request in lieu of making a full submission as required under 11 CFR 9036.2(b)(1), however, letter requests may not be submitted after the candidate's date of ineligibility. Letter requests shall state an amount of matchable contributions not previously submitted for matching and shall provide bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statement, demonstrating that the committee has received the funds for which matching payments are requested. The amount requested for matching may include contributions received up to the last business day preceding the date of the request. On the next submission date as designated for that committee after a letter request has been made, the committee shall submit the documentation required under 11 CFR 9036.2(b)(1) for all contributions included in the letter request, as well as any contributions submitted for matching in that full submission. If the candidate does not produce documentation for a letter request on the next submission date, the Commission will not accept any future letter requests from the candidate and the amount certified on the undocumented letter request will be the subject of a repayment determination under 11 CFR 9038.2(b)(1). A committee may not submit two consecutive letter requests, but the committee may choose to make a full regular submission on a date designated by the Commission as a letter request date for that committee.

(c) *Certification of additional payments by Commission.* (1) (i) When a candidate who is eligible under 11 CFR 9033.4 submits an additional submission for payment in the Presidential election year, the Commission may certify to the Secretary within 5 business days after the Commission's receipt of information submitted by the candidate under 11 CFR 9036.2(a), an amount based on the holdback procedure described in the Federal Election Commission's Guideline for Presentation in Good Order. If the candidate makes a letter request, the Commission may certify to the Secretary an amount which is less than that requested based upon the ratio of verified matchable contributions to total deposits for that committee in the committee's last regular submission.

(ii) The Commission will certify to the Secretary any additional amount to which the eligible candidate is entitled, if any, within 20 business days after the Commission's receipt of information submitted by the candidate under 11 CFR 9036.2(a), unless the projected dollar value of the nonmatchable contributions contained in the submission exceeds 10% of the amount requested. In the latter case, the Commission will certify any additional amount within 25 business days. See 11 CFR 9036.4 for Commission procedures for certification of additional payments.

(2) After a candidate's date of ineligibility, the Commission will certify to the Secretary, within 20 business days after receipt of a submission by the candidate under 11 CFR 9036.2(a), an amount to which the ineligible candidate is entitled in accordance with 11 CFR 9034.1(b), unless the projected dollar value of the nonmatchable contributions contained in the submission exceeds 10% of the amount requested. In the latter case, the Commission will certify any amount to which the ineligible candidate is entitled within 25 business days.

(d) *Additional submissions submitted in non-Presidential election year.* The candidate may submit additional contributions for review during the year preceding the Presidential election year; however, the amount of each submission made during this period must exceed $50,000. Additional submissions filed by a candidate in a non-Presidential election year will not result in payment of matching funds to the candidate until after January 1 of the Presidential election year.

§ 9036.3 Submission errors and insufficient documentation.

Contributions which are otherwise matchable may be rejected for matching purposes because of submission errors or insufficient supporting documentation. Contributions, other than those defined in 11 CFR 9034.3 or in the form of money orders, cashier's checks, or similar negotiable instruments, may become matchable if there is a proper resubmission in accordance with 11 CFR 9036.5 and 9036.6. Insufficient documentation or submission errors include but are not limited to:

(a) Discrepancies in the written instrument, such as:

(1) Instruments drawn on other than personal accounts of contributors and not signed by the contributing individual;

(2) Signature discrepancies; and

(3) Lack of the contributor's signature, the amount or date of the contribution, or the listing of the committee or candidate as payee.

(b) Discrepancies between listed contributions and the written instrument or supporting documentation, such as:

(1) The listed amount requested for matching exceeds the amount contained on the written instrument;

(2) A written instrument has not been submitted to support a listed contribution;

(3) The submitted written instrument cannot be associated either by accountholder identification or signature with the listed contributor; or

(4) A discrepancy between the listed contribution and the supporting bank documentation or the bank documentation is omitted.

(c) Discrepancies within or between contributor lists submitted, such as:

(1) The address of the contributor is omitted or incomplete or the contributor's name is alphabetized incorrectly, or more than one contributor is listed per item;

(2) A discrepancy in aggregation within or between submissions which results in a request that more than $250 be matched for that contributor, or a listing of a contributor more than once within the same submission; or

(3) A written instrument has been previously submitted and matched in full or is listed twice in the same submission.

(d) The omission of information, supporting statements, or documentation required by 11 CFR 9034.2.

§ 9036.4 Commission review of submissions.

(a) *Non-acceptance of submission for review of matchability.* The Commission will make an initial review of each submission made under 11 CFR Part 9036 to determine if it substantially meets the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order. If the Commission determines that a submission does not substantially meet these requirements, it will not review the matchability of the contributions contained therein. In such a case, the Commission will return the submission to the candidate and request that it be corrected in accordance with the format requirements. If the candidate makes a corrected submission within 3 business days after the Commission's return of the original, the Commission will review the corrected submission prior to the next regularly-scheduled submission date. Corrected submissions made after this three day period will be reviewed subsequent to the next regularly-scheduled submission date.

(b) *Acceptance of submission for review of matchability.* If the Commission determines that a submission made under 11 CFR Part 9036 satisfies the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order, it will review the matchability of the contributions contained therein. The Commission, in conducting its review, may utilize statistical sampling techniques. Based on the results of its review, the Commission may calculate a matchable amount for the submission which is less than the amount requested by the candidate. If the Commission certifies for payment to the Secretary an amount that is less than the amount requested by the candidate in a particular submission, or reduces the amount of a subsequent certification to the Secretary by adjusting a previous certification made under 11 CFR 9036.2(c)(1), the Commission will notify the candidate in writing of the following:

(1) The amount of the difference between the amount requested and the amount to be certified by the Commission;

(2) The amount of each contribution and the corresponding contributor's name for each contribution that the Commission has rejected as nonmatchable and the reason that it is not matchable; or if statistical sampling is used, the estimated amount of contributions by type and the reason for rejection;

(3) The amount of contributions that have been determined to be matchable and that the Commission will certify to the Secretary for payment; and

(4) A statement that the candidate may supply the Commission with additional documentation or other information in the resubmission of any rejected contribution under 11 CFR 9036.5 in order to show that a rejected contribution is matchable under 11 CFR 9034.2.

(c) *Adjustment of amount to be certified by Commission.* The candidate shall notify the Commission as soon as possible if the candidate or the candidate's authorized committee(s) has knowledge that a contribution submitted for matching does not qualify under 11 CFR 9034.2 as a matchable contribution, such as a check returned to the committee for insufficient funds or a contribution that has been refunded, so that the Commission may properly adjust the amount to be certified for payment.

(d) *Commission audit of submissions.* The Commission may determine, for the reasons stated in 11 CFR Part 9039, that an audit and examination of contributions submitted for matching payment is warranted. The audit and examination shall be conducted in accordance with the procedures of 11 CFR Part 9039.

§ 9036.5 Resubmissions.

(a) *Alternative resubmission methods.* Upon receipt of the Commission's notice of the results of the submission review pursuant to 11 CFR 9036.4(b), a candidate may choose to:

(1) Resubmit the entire submission; or

(2) Make a written request for the identification of the specific contributions that were rejected for matching, and resubmit those specific contributions.

(b) *Time for presentation of resubmissions.* If the candidate chooses to resubmit any contributions under 11 CFR 9036.5(a), the contributions shall be resubmitted on the dates designated for that candidate's resubmissions by the Commission. The Commission will notify the candidate of the dates so designated when the candidate's eligibility is determined under 11 CFR 9033.4. The candidate may not make any resubmissions later than September 1 of the year following the Presidential election year.

(c) *Format for resubmissions.* All resubmissions filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order. In making a presentation of resubmitted contributions, the candidate shall follow the format requirements as specified in 11 CFR 9036.2(b)(1), except that:

(1) The candidate need not provide photocopies of written instruments, supporting documentation and bank documentation unless it is necessary to supplement the original documentation.

(2) Each resubmitted contribution shall be referenced to the submission in which it was first presented.

(3) Each list of resubmitted contributions shall reflect the aggregate amount of contributions submitted for matching from each contributor as of the date of the original submission.

(4) Each list of resubmitted contributions shall reflect the aggregate amount of contributions submitted for matching from each contributor as of the date of the resubmission.

(5) Each list of resubmitted contributions shall only contain contributions previously submitted for matching and no new or additional contributions.

(6) Each resubmission shall be accompanied by a statement that the candidate has corrected his or her contributor records (including the data base for those candidates maintaining their contributor list on computer).

(d) *Certification of resubmitted contributions.* Contributions that the Commission determines to be matchable will be certified to the Secretary within 15 business days. If the candidate chooses to request the specific contributions rejected for matching pursuant to 11 CFR 9036.5(a)(2), the amount certified shall equal only the matchable amount of the particular contribution that meets the standards on resubmission, rather than the amount projected as being nonmatchable based on that contribution due to the sampling techniques used in reviewing the original submission.

(e) *Initial determinations.* If the candidate resubmits a contribution for matching and the Commission determines that the rejected contribution is still nonmatchable, the Commission will notify the candidate in writing of its determination. The Commission will advise the candidate of the legal and factual reasons for its determination and of the evidence on which that determination is based. The candidate may submit written legal or factual materials to demonstrate that the contribution is matchable within 30 calendar days after service of the Commission's notice. Such materials may be submitted by counsel if the candidate so desires.

(f) *Final determinations.* The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination by the Commission that a contribution is not matchable will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

§ 9036.6 Continuation of certification.

Candidates who have received matching funds and who are eligible to continue to receive such funds may continue to submit additional submissions for payment to the Commission on dates specified in the Federal Election Commission's Guideline for Presentation in Good Order. The Commission will notify each candidate of the last date on which contributions may be submitted for the first time for matching in the year following the election. The last date for first-time submissions will be either the last Monday in February or the second Monday in March of the year following

the election, depending on the submission schedule the Commission has designated for the candidate. No contribution will be matched if it is submitted after the last submission date designated for that candidate, regardless of the date the contribution was deposited.

PART 9037—PAYMENTS

Sec.
9037.1 Payments of Presidential primary matching funds.
9037.2 Equitable distribution of funds.
9037.3 Deposits of Presidential primary matching funds.

Authority: 26 U.S.C. 9037 and 9039(b).

§ 9037.1 Payments of Presidential primary matching funds.

Upon receipt of a written certification from the Commission, but not before the beginning of the matching payment period, the Secretary will promptly transfer the amount certified from the matching payment account to the candidate.

§ 9037.2 Equitable distribution of funds.

In making such transfers to candidates of the same political party, the Secretary will seek to achieve an equitable distribution of funds available in the matching payment account, and the Secretary will take into account, in seeking to achieve an equitable distribution of funds available in the matching payment account, the sequence in which such certifications are received.

§ 9037.3 Deposits of Presidential primary matching funds.

Upon receipt of any matching funds, the candidate shall deposit the full amount received into a checking account maintained by the candidate's principal campaign committee in the depository designated by the candidate.

PART 9038—EXAMINATIONS AND AUDITS

Sec.
9038.1 Audit.
9038.2 Repayments.
9038.3 Liquidation of obligations; repayment.
9038.4 Extensions of time.
9038.5 Petitions for rehearing; stays of repayment determinations.

Authority: 26 U.S.C. 9038 and 9039(b).

§ 9038.1 Audit.

(a) *General.* (1) The Commission will conduct an audit of the qualified campaign expenses of every candidate and his or her authorized committee(s) who received Presidential primary matching funds. The audit may be conducted at any time after the date of the candidate's ineligibility.

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9038.1(a) (1) and (2) may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9038.2.

(b) *Conduct of fieldwork.* (1) The Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee.

(i) *Office space and records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9033.1(b)(6).

(ii) *Availability of committee personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to provide staff, records or office space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9040(c) to enforce the candidate and committee agreement made under 11 CFR 9033.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have 10 calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreement.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement, within 10 calendar days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(2) Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance conference.* At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the United States Treasury, will also be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9038.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9038.1(b) (1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Committee responses to audit findings;

(ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to 11 CFR 9038.1(b)(1);

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9038.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of 11 CFR 9038.1(b) (1) and (2) shall apply to any additional fieldwork conducted.

(c) *Preparation of interim audit report.* (1) After the completion of the fieldwork conducted pursuant to 11 CFR 9038.1(b)(1), the Commission will issue an interim audit report to the candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, Primary Matching Payment Account Act and Commission regulations;

(ii) Eligibility of the candidate to receive primary matching payments;

(iii) Accuracy of statements and reports filed with the Commission by the candidate and committee;

(iv) Compliance of the candidate and committee with applicable statutory and regulatory provisions except for those instances where the Commission has instituted an enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR Part 111; and

(v) Preliminary calculations regarding future repayments to the United States Treasury.

(2) The candidate and his or her authorized committee will have an opportunity to submit, in writing, within 30 calendar days after service of the interim report, legal and factual materials disputing or commenting on the contents of the interim report. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 CFR 9038.1(c)(2) before approving and issuing an audit report to be released to the public. The contents of the publicly-released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committee in response to the interim report.

(d) *Preparation of publicly-released audit report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to 11 CFR 9038.1(e). This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9038.2(c)(1) in lieu of the preliminary calculations set forth in the interim report.

(e) *Public release of audit report.* (1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make public the audit report prepared subsequent to the interim report, as provided in 11 CFR 9038.1(d).

(2) If the Commission determines, on the basis of information obtained under the audit and examination process, that certain matters warrant enforcement under 2 U.S.C. 437g and 11 CFR Part 111, those matters will not be contained in the publicly-released report. In such cases, the audit report will indicate that certain other matters have been referred to the Commission's Office of General Counsel.

(3) The Commission will provide the candidate and committee copies of the audit report 24 hours prior to releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based, in part, on follow-up fieldwork conducted under 11 CFR 9038.1(b)(3), and will be placed on the public record.

§ 9038.2 Repayments.

(a) *General.* (1) A candidate who has received payments from the matching payment account shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9038.1 and Part 9039 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the end of the matching payment period.

(3) Once the candidate receives notice of the Commission's final repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(b) *Bases for repayment.*—(1) *Payments in excess of candidate's entitlement.* The Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Examples of such excessive payments include, but are not limited to, the following:

(i) Payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 CFR 9034.5;

(ii) Payments or portions of payments made to the candidate which are later determined to have been excessive due to the operation of the Commission's expedited payment procedures as set forth in the Federal Election Commission's Guideline For Presentation In Good Order;

(iii) Payments or portions of payments made on the basis of matched contributions later determined to have been non-matchable;

(iv) Payments or portions of payments made to the candidate which are later determined to have been excessive due to the candidate's failure to include funds received by a fundraising representative committee under 11 CFR 9034.8 on the candidate's statement of net outstanding campaign obligations under 11 CFR 9034.5; and

(v) Payments or portions of payments made to the candidate on the basis of the debts reflected in the candidate's statement of net outstanding campaign obligations, which debts are later settled for an amount less than that stated in the statement of net outstanding campaign obligations.

(2) *Use of funds for non-qualified campaign expenses.* (i) The Commission may determine that amount(s) of any payments made to a candidate from the matching payment account were used for purposes other than those set forth in (A)–(C) below:

(A) Defrayal of qualified campaign expenses;

(B) Repayment of loans which were used to defray qualified campaign expenses; and

(C) Restoration of funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under 11 CFR

9038.2(b)(2) include, but are not limited to, the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agents have made expenditures in excess of the limitations set forth in 11 CFR 9035;

(B) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended in violation of state or federal law; and

(C) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended for expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility. To determine at what point committee accounts no longer contain matching funds for the purpose of seeking repayment for non-qualified campaign expenses, the Commission will review committee expenditures from the date of the last matching fund payment to the candidate, using the assumption that the last payment has been expended on a last-in, first-out basis.

(3) *Failure to provide adequate documentation.* The Commission may determine that amount(s) spent by the candidate, the candidate's authorized committee(s), or agents were not documented in accordance with 11 CFR 9033.11. The amount of any repayment sought under this section shall be determined by using the formula set forth in 11 CFR 9038.2(b)(2)(iii).

(4) *Surplus.* The Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus.

(c) *Repayment determination procedures.* Commission repayment determinations will be made in accordance with the procedures set forth at 11 CFR 9038.2(c) (1) through (4), below.

(1) *Initial determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly released audit report, pursuant to 11 CFR 9038.1(d), and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days after service of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of written materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30 day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral presentation.* A candidate who has submitted written materials under 11 CFR 9038.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under 11 CFR 9038.2(c)(2). The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(4) *Final determination.* In making its final repayment determination(s), the Commission will consider any submission made under 11 CFR 9038.2(c)(2) and any oral presentation made under 11 CFR 9038.2(c)(3). A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment period.* (1) Within 90 calendar days after service of the notice of the Commission's initial repayment determination(s), the candidate shall repay to the Secretary amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate submits written materials under 11 CFR 9038.2(c)(2) disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 20 calendar days after service of the notice of the Commission's final repayment determination(s), the candidate shall repay to the Secretary amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 days in which to make repayment.

(e) *Computation of time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9038.2(b) after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any initial or final repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding campaign obligations submitted pursuant to 11 CFR 9034.5, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding campaign obligations. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9038.2(f).

(h) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a final repayment determination in accordance with 11 CFR 9038.5(a). The candidate may request a stay of a final repayment determination in accordance with 11 CFR 9038.5(c) pending the candidate's appeal of that repayment determination.

§ 9038.3 Liquidation of obligations; repayment.

(a) The candidate may retain amounts received from the matching payment account for a period not exceeding 6 months after the matching payment period to pay qualified campaign expenses incurred by the candidate.

(b) After all obligations have been liquidated, the candidate shall so inform the Commission in writing.

(c)(1) If on the last day of candidate eligibility the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus, the candidate shall within 30 calendar days of the ineligibility date repay to the Secretary an amount which represents the amount of matching funds contained in the candidate's surplus. The amount shall be an amount equal to that portion of the surplus which bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to the total deposits made to the candidate's accounts.

(2) For purposes of this subsection, total deposits shall be considered all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts.

(3) Notwithstanding the payment of any amounts to the United States Treasury under this section, the Commission may make surplus repayment determination(s) which require repayment in accordance with 11 CFR 9038.2.

§ 9038.4 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR Part 9038 shall not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR Part 9038 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder will be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR Part 9038 the Commission may, on the candidate's showing of excusable neglect:

(i) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(ii) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR Part 9038.

§ 9038.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final determination under 11 CFR 9033.10 or 9034.5(f) or the Commission's final repayment determination under 11 CFR 9038.2(c)(4), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days after service of the Commission's final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the earlier determination process.

(2) If a candidate files a timely petition under this section challenging a Commission final repayment determination, the time for repayment of the amount at issue will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9038.2(d)(2) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9041(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's initial determination.

(c) *Stay of repayment determination pending appeal.* (1) The candidate may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9038.2 pending the candidate's appeal of that repayment determination pursuant to 26 U.S.C. 9041(a). A request for a stay shall be made in writing and shall be filed within 20 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) or, if no petition for rehearing is filed, within 20 calendar days after service of the Commission's final repayment determination under 11 CFR 9038.2(c)(4). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(2) The candidate's application for a stay shall demonstrate that:

(i) He or she will suffer irreparable injury in the absence of a stay; and, if so, that

(ii) He or she has made a strong showing of the likelihood of success on the merits of the judicial action;

(iii) Such relief is consistent with the public interest; and

(iv) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the candidate has made a strong showing of the likelihood of success on the merits, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

Sec.

Authority: 26 U.S.C. 9039.

§ 9039.1 Retention of books and records.

The candidate and his or her authorized committee(s) shall keep all books, records and other information required under 11 CFR 9033.11, 9034.2 and Part 9036 for a period of three years pursuant to 11 CFR 102.9(c) and shall furnish such books, records and information to the Commission on request.

§ 9039.2 Continuing review.

(a) In reviewing candidate submissions made under 11 CFR Part 9036 and in otherwise carrying out its responsibilities under this subchapter,

the Commission may routinely consider information from the following sources:

(1) Any and all materials and communications which the candidate and his or her authorized committee(s) submit or provide under 11 CFR Part 9036 and in response to inquiries or requests of the Commission and its staff;

(2) Disclosure reports on file with the Commission; and

(3) Other publicly available documents.

(b) In carrying out the Commission's responsibilities under this subchapter, Commission staff may contact representatives of the candidate and his or her authorized committee(s) to discuss questions and to request documentation concerning committee activities and any submission made under 11 CFR Part 9036.

§ 9039.3 Examinations and audits; investigations.

(a) *General.* (1) The Commission will consider information obtained in its continuing review under 11 CFR 9039.2 in making any certification, determination or finding under this subchapter. If the Commission decides by an affirmative vote of four of its members that additional information must be obtained in connection with any such certification, determination or finding, it will conduct a further inquiry. A decision to conduct an inquiry under this section may be based on information that is obtained under 11 CFR 9039.2, received by the Commission from outside sources, or otherwise ascertained by the Commission in carrying out its supervisory responsibilities under the Presidential Primary Matching Payment Account Act and the Federal Election Campaign Act.

(2) An inquiry conducted under this section may be used to obtain information relevant to candidate eligibility, matchability of contributions and repayments to the United States Treasury. Information obtained during such an inquiry may be used as the basis, or partial basis, for Commission certifications, determinations and findings under 11 CFR Parts 9033, 9034, 9036 and 9038. Information thus obtained may also be the basis of, or be considered in connection with, an investigation under 2 U.S.C. 437g and 11 CFR Part 111.

(3) Before conducting an inquiry under this section, the Commission will attempt to obtain relevant information under the continuing review provisions of 11 CFR 9039.2. Matching payments will not be withheld pending the results of an inquiry under this section unless the Commission finds patent irregularities suggesting the possibility of fraud in materials submitted by, or in the activities of, the candidate or his or her authorized committee(s).

(b) *Procedures.* (1) The Commission will notify the candidate of its decision to conduct an inquiry under this section. The notice will summarize the legal and factual basis for the Commission's decision.

(2) The Commission's inquiry may include, but is not limited to, the following:

(i) A field audit of the candidate's books and records;

(ii) Field interviews of agents and representatives of the candidate and his or her authorized committee(s);

(iii) Verification of reported contributions by contacting reported contributors;

(iv) Verification of disbursement information by contacting reported vendors;

(v) Written questions under order;

(vi) Production of documents under subpoena;

(vii) Depositions.

(3) The provisions of 2 U.S.C. 437g and 11 CFR Part 111 will not apply to inquiries conducted under this section except that the provisions of 11 CFR 111.12 through 111.15 shall apply to any orders or subpoenas issued by the Commission.

4. It is proposed to amend 11 CFR by revising Parts 9001 through 9007 to read as follows:

PART 9001—SCOPE

Authority: 26 U.S.C. 9009(b).

§ 9001.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Election Campaign Fund under 26 U.S.C. 9001 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431–455 of Title 2, United States Code, and regulations prescribed thereunder (11 CFR Parts 100 through 115). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431–455 of Title 2, United States Code, or regulations prescribed thereunder (11 CFR Parts 100 through 115).

PART 9002—DEFINITIONS

Sec.

Authority: 26 U.S.C. 9002 and 9009(b).

§ 9002.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, "authorized committee" means with respect to a candidate (as defined at 11 CFR 9002.2) of a political party for President and Vice President, any political committee that is authorized by a candidate to incur expenses on behalf of such candidate. The term "authorized committee" includes the candidate's principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate pursuant to 11 CFR 100.3(a)(3). If a party has nominated a Presidential and a Vice Presidential candidate, all political committees authorized by that party's Presidential candidate shall also be authorized committees of the Vice Presidential candidate and all political committees authorized by the Vice Presidential candidate shall also be authorized committees of the Presidential candidate.

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same manner provided for at 11 CFR 102.12 or 102.13.

(c) Any candidate nominated by a political party may designate the national committee of that political party as that candidate's authorized committee in accordance with 11 CFR 102.12(c).

(d) For purposes of this subchapter, references to the "candidate" and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate's authorized committee(s).

§ 9002.2 Candidate.

(a) For the purposes of this subchapter, "candidate" means with respect to any Presidential election, an individual who—

(1) Has been nominated by a major party for election to the Office of President of the United States or the Office of Vice President of the United States; or

(2) Has qualified or consented to have his or her name appear on the general election ballot (or to have the names of electors pledged to him or her on such ballot) as the candidate of a political party for election to either such office in 10 or more States. For the purposes of this section, "political party" shall be defined in accordance with 11 CFR 9002.15.

(b) An individual who is no longer actively conducting campaigns in more than one State pursuant to 11 CFR 9004.8 shall cease to be a candidate for the purpose of this subchapter.

§ 9002.3 Commission.

"Commission" means the Federal Election Commission, 1325 K Street NW., Washington, DC 20463.

§ 9002.4 Eligible candidates.

"Eligible candidates" means those Presidential and Vice Presidential candidates who have met all applicable conditions for eligibility to receive payments from the Fund under 11 CFR Part 9003.

§ 9002.5 Fund.

"Fund" means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

§ 9002.6 Major party.

"Major party" means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.6, "candidate" means, with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.7 Minor party.

"Minor party" means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.7, "candidate" means with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.8 New party.

"New party" means a political party which is neither a major party nor a minor party.

§ 9002.9 Political committee.

For purposes of this subchapter, "political committee" means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the election of any candidate to the office of President or Vice President of the United States; except that for the purpose of 11 CFR 9012.6, the term "political committee" shall be defined in accordance with 11 CFR 100.5.

§ 9002.10 Presidential election.

"Presidential election" means the election of Presidential and Vice Presidential electors.

§ 9002.11 Qualified campaign expense.

(a) "Qualified campaign expense" means any expenditure, including a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred to further a candidate's campaign for election to the office of President or Vice President of the United States;

(2) Incurred within the expenditure report period, as defined under 11 CFR 9002.12, or incurred before the beginning of such period in accordance with 11 CFR 9003.4 to the extent such expenditure is for property, services or facilities to be used during such period; and

(3) Neither the incurrence nor the payment of such expenditure constitutes a violation of any law of the United States, any law of the State in which such expense is incurred or paid, or any regulation prescribed under such Federal or State law, except that any State law which has been preempted by the Federal Election Campaign Act of 1971, as amended, shall not be considered a State law for purposes of this subchapter. An expenditure which constitutes such a violation shall nevertheless count against the candidate's expenditure limitation if the expenditure meets the conditions set forth at 11 CFR 9002.11(a) (1) and (2).

(b)(1) An expenditure is made to further a Presidential or Vice Presidential candidate's campaign if it is incurred by or on behalf of such candidate or his or her authorized committee. For purposes of 11 CFR 9002.11(b)(1), any expenditure incurred by or on behalf of a Presidential candidate of a political party will also be considered an expenditure to further the campaign of the Vice Presidential candidate of that party. Any expenditure incurred by or on behalf of the Vice Presidential candidate will also be considered an expenditure to further the campaign of the Presidential candidate of that party.

(2) An expenditure is made on behalf of a candidate if it is made by—

(i) Any authorized committee or any other agent of the candidate for the purpose of making an expenditure; or

(ii) Any person authorized or requested by the candidate, by the candidate's authorized committee(s), or by an agent of the candidate or his or her authorized committee(s) to make an expenditure; or

(iii) A committee which has been requested by the candidate, the candidate's authorized committee(s), or an agent thereof to make the expenditure, even though such committee is not authorized in writing.

(3) Any expenditure incurred by a candidate or his or her authorized committee(s) to further the election of any other individual to a Federal, State or local office shall be a qualified campaign expense to the extent such expenditure is to further the candidate's own campaign for election. If the expenditure is incurred specifically to further the election of such other individuals, it will not be considered a qualified campaign expense.

(4) Expenditures by a candidate's authorized committee(s) pursuant to 11 CFR 9004.6 for the travel and related ground service costs of media shall be qualified campaign expenses. Any reimbursement for travel and related services costs received by a candidate's authorized committee shall be subject to the provisions of 11 CFR 9004.6.

(5) Legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et seq.*, or 26 U.S.C. 9001, *et seq.*, shall be qualified campaign expenses which may be paid from payments received from the Fund. If federal funds are used to pay for such services, the payments will count against the candidate's expenditure limitation. Payments for such services may also be made from an account established in accordance with 11 CFR 9003.3 or may be provided to the committee in accordance with 11 CFR 100.7(b)(14) and 100.8(b)(15). If payments for such services are made from an account established in accordance with 11 CFR 9003.3, the payments do not count against the candidate's expenditure limitation. If payments for such services are made by a minor or new party candidate from an account containing private contributions, the payments do not count against that candidate's expenditure limitation. The amount paid by the committee shall be

reported in accordance with 11 CFR Part 9006. Amounts paid by the regular employer of the person providing such services pursuant to 11 CFR 100.7(b)(14) and 100.8(b)(15) shall be reported by the recipient committee in accordance with 11 CFR 104.3(h).

(c) Expenditures incurred either before the beginning of the expenditure report period or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a). Expenditures described under 11 CFR 9004.4(b) will not be considered qualified campaign expenses.

(d) Expenditures that further the election of other candidates for any public office shall be allocated in accordance with 11 CFR 106.1(a) and will be considered qualified campaign expenses only to the extent that they specifically further the election of the candidate for President or Vice President. A candidate may make expenditures under this section in conjunction with other candidates for any public office, but each candidate shall pay his or her proportionate share of the cost in accordance with 11 CFR 106.1(a).

§ 9002.12 Expenditure report period.

"Expenditure report period" means, with respect to any Presidential election, the period of time described in either paragraph (a) or (b) of this section, as appropriate.

(a) In the case of a major party, the expenditure report period begins on September 1 before the election or on the date on which the major party's presidential nominee is chosen, whichever is earlier; and the period ends 30 days after the Presidential election.

(b) In the case of a minor or new party, the period will be the same as that of the major party with the shortest expenditure report period for that Presidential election as determined under paragraph (a) of this section.

§ 9002.13 Contribution.

"Contribution" has the same meaning given the term under 2 U.S.C. 431(8), 441b and 441c, and under 11 CFR 100.7, and 11 CFR Parts 114 and 115.

§ 9002.14 Secretary.

"Secretary" means the Secretary of the Treasury.

§ 9002.15 Political party.

"Political party" means an association, committee, or organization which nominates or selects an individual for election to any Federal office, including the office of President or Vice President of the United States, whose name appears on the general election ballot as the candidate of such association, committee, or organization.

PART 9003—ELIGIBILITY FOR PAYMENTS

Sec.

Authority: 26 U.S.C. 9003 and 9009(b).

§ 9003.1 Candidate and committee agreements.

(a) *General.* (1) To become eligible to receive payments under 11 CFR Part 9005, the Presidential and Vice Presidential candidates of a political party shall agree in a letter signed by the candidates to the Commission that they and their authorized committee(s) shall comply with the conditions set forth in 11 CFR 9003.1(b).

(2) Major party candidates shall sign and submit such letter to the Commission within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more states pursuant to 11 CFR 9002.2(a)(2). The Commission, on written request by a minor or new party candidate, at any time prior to the date of the general election, may extend the deadline for filing such letter except that the deadline shall be a date prior to the date of the general election.

(b) *Conditions.* The candidates shall:

(1) Agree that they have the burden of proving that disbursements made by them or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 CFR 9002.11.

(2) Agree that they and their authorized committee(s) shall comply with the documentation requirements set forth at 11 CFR 9003.5.

(3) Agree that they and their authorized committee(s) shall provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidates or the authorized committee(s) of the candidates and the campaign if requested by the Commission.

(4) Agree that they and their authorized committee(s) shall keep and furnish to the Commission all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter including those required to be maintained under 11 CFR 9003.5, and other information the Commission may request. The records provided shall also include production of magnetic computer tapes containing all information required by law to be maintained regarding the committee's receipts and disbursements, if the committee maintains its records on computer. Upon request, documentation explaining the computer system's software capabilities shall also be provided.

(5) Agree that they and their authorized committee(s) shall permit an audit and examination pursuant to 11 CFR Part 9007 of all receipts and disbursements including those made by the candidate, all authorized committees and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR Part 9007.

(6) Submit the name and mailing address of the person who is entitled to receive payments from the Fund on behalf of the candidates; the name and address of the depository designated by the candidates as required by 11 CFR Part 103 and 11 CFR 9005.2; and the name under which each account is held at the depository at which the payments from the Fund are to be deposited.

(7) Agree that they and their authorized committee(s) shall comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9001 *et seq.*, and the Commission's regulations at 11 CFR Parts 100–115, and 9001–9012.

(8) Agree that they and their authorized committee(s) shall pay any civil penalties included in a conciliation agreement entered into under 2 U.S.C. 437g against the candidates, any authorized committees of the candidates or any agent thereof.

§ 9003.2 Candidate certifications.

(a) *Major Party Candidates.* To be eligible to receive payments under 11 CFR Part 9005, each Presidential and Vice Presidential candidate of a major party shall, under penalty of perjury, certify to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified

campaign expenses in excess of the aggregate payments to which they will be entitled under 11 CFR Part 9004.

(2) That no contributions have been or will be accepted by the candidate or his or her authorized committee(s); except as contributions specifically solicited for, and deposited to, the candidate's legal and accounting compliance fund established under 11 CFR 9003.3(a); or except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Minor and new party candidates.* To be eligible to receive any payments under 11 CFR Part 9005, each Presidential and Vice Presidential candidate of a minor or new party shall, under penalty of perjury, certify to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1.

(2) That no contributions to defray qualified campaign expenses have been or will be accepted by the candidate or his or her authorized committee(s) except to the extent that the qualified campaign expenses incurred exceed the aggregate payments received by such candidate from the Fund under 11 CFR 9004.2.

(c) *All candidates.* To be eligible to receive any payment under 11 CFR 9004.2, the Presidential candidate of each major, minor or new party shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his or her personal funds, or the personal funds of his or her immediate family, in connection with his or her campaign for the office of President in excess of $50,000 in the aggregate.

(1) For purposes of this section, the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(2) Expenditures from personal funds made under this paragraph shall not apply against the expenditure limitations.

(3) For purposes of this section, the terms "personal funds" and "personal funds of his or her immediate family" mean:

(i) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

(A) Legal and rightful title, or

(B) An equitable interest.

(ii) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is a beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

(iii) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by any instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

(4) For purposes of this section, expenditures from personal funds made by a candidate of a political party for the office of Vice President shall be considered to be expenditures made by the candidate of such party for the office of President.

(5) Contributions made by members of a candidate's family from funds which do not meet the definition of personal funds under 11 CFR 9003.2(c)(3) shall not count against such candidate's $50,000 expenditure limitation under 11 CFR 9003.2(c).

(6) Personal funds expended pursuant to this section shall be first deposited in an account established in accordance with 11 CFR 9003.3 (b) or (c).

(7) The provisions of this section shall not operate to limit the candidate's liability for, nor the candidate's ability to pay, any repayments required under 11 CFR Part 9007.

(8) The candidate's or committee's use of a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the balance due is not paid by the date on which payment must be made according to the terms of the credit card agreement.

(d) *Form.* Major party candidates shall submit the certifications required under 11 CFR 9003.2 in a letter which shall be signed and submitted within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more States pursuant to 11 CFR 9002.2(a)(2). The Commission, upon written request by a minor or new party candidate made at any time prior to the date of the general election, may extend the deadline for filing such letter, except that the deadline shall be a date prior to the day of the general election.

§ 9003.3 Allowable Contributions.

(a) *Legal and accounting compliance fund—major party candidates—* (1) *Sources* (i) A major party candidate may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A legal and accounting compliance fund may be established by such candidate prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States.

(A) All solicitations for contributions to this fund shall clearly state that such contributions are being solicited for this fund.

(B) Contributions to this fund shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114, and 115.

(ii) Funds remaining in the primary election account of a candidate, which funds are in excess of any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2, may be transferred to the legal and accounting compliance fund without regard to the contribution limitations of 11 CFR Part 110 and used for any purpose permitted under this section.

(iii) Contributions that are made after the beginning of the expenditure report period but which are designated for the primary election, and contributions that exceed the contributor's limit for the primary election, may be deposited in the legal and accounting compliance fund if the candidate obtains the contributor's redesignation, or a reattribution to a joint contributor, in accordance with 11 CFR 110.1. The contributions so received and deposited shall be subject to the contribution limitations applicable for the general election, pursuant to 11 CFR 110.1(a)(2)(ii)(B).

(2) *Uses.* (i) Contributions to the legal and accounting compliance fund shall be used only for the following purposes:

(A) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et*

seq., and 26 U.S.C. 9001 *et seq.*, in accordance with 11 CFR 9003.3(a)(2)(ii);

(B) To defray in accordance with 11 CFR 9003.3(a)(2)(ii)(A), that portion of expenditures for payroll, overhead, and computer services related to ensuring compliance with 2 U.S.C. 431 *et seq.*, and 26 U.S.C. 9001 *et seq.*;

(C) To defray any civil or criminal penalties imposed pursuant to 2 U.S.C. 437g or 26 U.S.C. 9012;

(D) To make repayments under 11 CFR 9007.2;

(E) To defray the cost of soliciting contributions to the legal and accounting compliance fund; and

(F) To make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of federal funds, provided that the amounts so loaned are restored to the legal and accounting compliance fund.

(ii) (A) Expenditures for payroll (including payroll taxes), overhead and computer services, a portion of which are related to ensuring compliance with Title 2 and Chapter 95 of Title 26, shall be initially paid from the candidate's federal fund account under 11 CFR 9005.2 and may be later reimbursed by the compliance fund. For purposes of 11 CFR 9003.3(a)(2)(i)(B), a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 10% of the payroll and overhead expenditures of his or her national campaign headquarters and state offices. Overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies and all telephone charges. In addition, a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 70% of the costs (other than payroll) associated with computer services. Such costs include but are not limited to rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies. If the candidate wishes to claim a larger compliance exemption for payroll or overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered necessary to ensure compliance with Title 2 or Chapter 95 of Title 26. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity. If the candidate wishes to claim a larger compliance exemption for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by persons other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function. The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs.

(B) Reimbursement from the compliance fund may be made to the separate account maintained for federal funds under 11 CFR 9005.2 for legal and accounting compliance services disbursements that are initially paid from the separate federal funds account. Such reimbursement must be made prior to any final repayment determination by the Commission pursuant to 11 CFR 9007.2. Any amounts so reimbursed to the federal fund account may not subsequently be transferred back to the legal and accounting compliance fund.

(iii) Amounts paid from this account for the purposes permitted by 11 CFR 9003.3(a)(2)(i) (A) through (E) shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (See also 11 CFR 100.8(b)(15)). When the proceeds of loans made in accordance with 11 CFR 9003.2(a)(2)(i)(F) are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

(iv) Contributions to or funds deposited in the legal and accounting compliance fund may not be used to retire debts remaining from the Presidential primaries, except that, if after payment of all expenses relating to the general election, there are excess campaign funds, such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR Part 113, including payment of primary election debts.

(3) *Deposit and disclosure.* (i) Amounts received pursuant to 11 CFR 9003.3(a)(1) shall be deposited and maintained in an account separate from that described in 11 CFR 9005.2 and shall not be commingled with any money paid to the candidate by the Secretary pursuant to 11 CFR 9005.2.

(ii) The receipts to and disbursements from this account shall be reported in a separate report in accordance with 11 CFR 9006.1(b)(2). All contributions made to this account shall be recorded in accordance with 11 CFR 102.9. Disbursements made from this account shall be documented in the same manner provided in 11 CFR 9003.5.

(b) *Contributions to defray qualified campaign expenses—major party Candidates.*

(1) A major party candidate or his or her authorized committee(s) may solicit contributions to defray qualified campaign expenses to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(2) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only to defray qualified campaign expenses and to defray the cost of soliciting contributions to such account. All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR 9006.1.

(3) A candidate may make transfers to this account from his or her legal and accounting compliance fund.

(4) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114 and 115 and shall be aggregated with all contributions made by the same persons to the candidate's legal and accounting compliance fund under 11 CFR 9003.3(a) for the purposes of such limitations.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and 11 CFR 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C 431 *et seq.* and 26 U.S.C. 9001 *et seq.*

shall not count against the candidate's expenditure limitation. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(b)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and all telephone charges.

(ii) For purposes of 11 CFR 9003.3(b)(6) costs associated with computer services include, but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(b) (5) or (6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(b)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

(c) *Contributions to defray qualified campaign expenses—minor and new party candidates.* (1) A minor or new party candidate may solicit contributions to defray qualified campaign expenses which exceed the amount received by such candidate from the Fund, subject to the limits of 11 CFR 9003.2(b).

(2) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114 and 115.

(3) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only for the following purposes:

(i) To defray qualified campaign expenses;

(ii) To make repayments under 11 CFR 9007.2;

(iii) To defray the cost of soliciting contributions to such account;

(iv) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*

(4) All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR Parts 104 and 9006.1.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(c)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and all telephone charges.

(ii) For purposes of 11 CFR 9003.3(c)(6) costs associated with computer services include but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(c)(6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(c)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The candidate shall keep and maintain a separate record of disbursements made to defray exempt legal and accounting costs under 11 CFR 9003.3(c) (6) and (7) and shall report such disbursements in accordance with 11 CFR Part 104 and 11 CFR 9006.1.

(10) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

§ 9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.

(a) *Permissible Expenditures.* (1) A candidate may incur expenditures before the beginning of the expenditure report period, as defined at 11 CFR 9002.12, if such expenditures are for property, services or facilities which are to be used in connection with his or her general election campaign and which are for use during the expenditure report period. Such expenditures will be considered qualified campaign expenses. Examples of such expenditures include but are not limited to: expenditures for establishing financial accounting systems, expenditures for organizational planning and expenditures for polling.

(2) A candidate may incur qualified campaign expenses prior to receiving payments under 11 CFR Part 9005.

(b) *Sources.* (1) A candidate may obtain a loan which meets the requirements of 11 CFR 100.7(b)(11) for loans in the ordinary course of business to defray permissible expenditures described in 11 CFR 9003.4(a). A candidate receiving payments equal to the expenditure limitation in 11 CFR 110.8 shall make full repayment of principal and interest on such loans from payments received by the candidate under 11 CFR Part 9005 within 15 days of receiving such payments.

(2) A major party candidate may borrow from his or her legal and accounting compliance fund for the purposes of defraying permissible expenditures described in 11 CFR 9003.4(a). All amounts borrowed from the legal and accounting compliance fund must be restored to such fund after the beginning of the expenditure report period either from federal funds received under 11 CFR Part 9005 or private contributions received under 11 CFR 9003.3(b). For candidates receiving federal funds, restoration shall be made within 15 days after receipt of such funds.

(3) A minor or new party candidate may defray such expenditures from contributions received in accordance with 11 CFR 9003.3(c).

(4) (i) A candidate who has received federal funding under 11 CFR Part 9031 *et seq.*, may borrow from his or her primary election campaign an amount not to exceed the residual balance projected to remain in the candidate's primary account(s) on the basis of the formula set forth at 11 CFR 9038.3(c). A major party candidate receiving payments equal to the expenditure limitation shall reimburse amounts borrowed from his or her primary campaign from payments received by the candidate under 11 CFR Part 9005 within 15 days of such receipt.

(ii) A candidate who has not received federal funding during the primary campaign may borrow at any time from his or her primary account(s) to defray such expenditures, provided that a major party candidate receiving payments equal to the expenditure limitation shall reimburse all amounts borrowed from his or her primary campaign from payments received by the candidate under 11 CFR Part 9005 within 15 days of such receipt.

(5) A candidate may use personal funds in accordance with 11 CFR 9003.2(c), up to his or her $50,000 limit, to defray such expenditures.

(c) *Deposit and disclosure.* Amounts received or borrowed by a candidate under 11 CFR 9003.4(b) to defray expenditures permitted under 11 CFR 9003.4(a) shall be deposited in a separate account to be used only for such expenditures. All receipts and disbursements from such account shall be reported pursuant to 11 CFR 9006.1(a) and documented in accordance with 11 CFR 9003.5.

§ 9003.5 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9002.11. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission at its request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9003.5(b).

(b) *Documentation required.* (1) For disbursements in excess of $200 to a payee, the candidate shall present either:

(i) A receipted bill from the payee that states the purpose of the disbursement; or

(ii) If such a receipt is not available, a cancelled check negotiated by the payee, and

(A) One of the following documents generated by the payee: a bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in 11 CFR 9003.5(b)(1)(ii)(A) are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in 11 CFR 9003.5(b)(1)(i) nor the supporting documentation specified in 11 CFR 9003.5(b)(1)(ii) is available, a cancelled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in 11 CFR 9003.5(b)(1)(i), (ii) or (iii) is not available, the candidate or committee may present a cancelled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office;

(B) Evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a per diem policy.

(2) For all other disbursements the candidate shall present:

(i) A record disclosing the full name and mailing address of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A cancelled check negotiated by the payee that states the full name and mailing address of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section:

(i) "Payee" means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $500 or less advanced for travel and/or subsistence and if the individual is the recipient of the goods or services purchased.

(ii) "Purpose" means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR

102.9(c), and shall present these records to the Commission on request.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

Sec.
9004.1 Major parties.
9004.2 Pre-election payments for minor and new party candidates.
9004.3 Post-election payments.
9004.4 Use of payments.
9004.5 Investment of public funds.
9004.6 Reimbursements for transportation and services made available to media personnel.
9004.7 Allocation of travel expenditures.
9004.8 Withdrawal by candidate.
9004.9 Net outstanding qualified campaign expenses.
9004.10 Sale of assets acquired for fundraising purposes.

Authority: 26 U.S.C. 9004 and 9009(b).

§ 9004.1 Major parties.

The eligible candidates of each major party in a Presidential election shall be entitled to equal payments under 11 CFR Part 9005 in an amount which, in the aggregate, shall not exceed $20,000,000 as adjusted by the Consumer Price Index in the manner described in 11 CFR 110.9(c).

§ 9004.2 Pre-election payments for minor and new party candidates.

(a) *Candidate of a minor party in the preceding election.* An eligible candidate of a minor party is entitled to preelection payments:

(1) If he or she received at least 5% of the total popular vote as the candidate of a minor party in the preceding election whether or not he or she is the same minor party's candidate in this election.

(2) In an amount which is equal, in the aggregate, to a proportionate share of the amount to which major party candidates are entitled under 11 CFR 9004.1. The aggregate amount received by a minor party candidate shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor party Presidential candidate in the preceding Presidential election bears to the average number of popular votes received by all major party candidates in that election.

(b) *Candidate of a minor party in the current election.* The eligible candidate of a minor party whose candidate for the office of President in the preceding election received at least 5% but less than 25% of the total popular vote is eligible to receive pre-election payments. The amount which a minor party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the minor party's candidate in the preceding Presidential election; however, the amount to which the minor party candidate is entitled under this section shall be reduced by the amount to which the minor party's Presidential candidate in this election is entitled under 11 CFR 9004.2(a), if any.

(c) *New party candidate.* A candidate of a new party who was a candidate for the office of President in at least 10 States in the preceding election may be eligible to receive preelection payments if he or she received at least 5% but less than 25% of the total popular vote in the preceding election. The amount which a new party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the new party candidate in the preceding election. If a new party candidate is entitled to payments under this section, the amount of the entitlement shall be reduced by the amount to which the candidate is entitled under 11 CFR 9004.2(a), if any.

§ 9004.3 Post-election payments.

(a) *Minor and new party candidates.* Eligible candidates of a minor party or of a new party who, as candidates, receive 5 percent or more of the total number of popular votes cast for the office of President in the election shall be entitled to payments under 11 CFR Part 9005 equal, in the aggregate, to a proportionate share of the amount allowed for major party candidates under 11 CFR 9004.1. The amount to which a minor or new party candidate is entitled shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor or new party candidate in the Presidential election bears to the average number of popular votes received by the major party candidates for President in that election.

(b) *Amount of entitlement.* The aggregate payments to which an eligible candidate shall be entitled shall not exceed an amount equal to the lower of:

(1) The amount of qualified campaign expenses incurred by such eligible candidate and his or her authorized committee(s), reduced by the amount of contributions which are received to defray qualified campaign expenses by such eligible candidate and such committee(s); or

(2) The aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1, reduced by the amount of contributions received by such eligible candidates and their authorized committees to defray qualified campaign expenses in the case of a deficiency in the Fund.

(c) *Amount of entitlement limited by pre-election payment.* If an eligible candidate is entitled to payment under 11 CFR 9004.2, the amount allowable to that candidate under this section shall also be limited to the amount, if any, by which the entitlement under 11 CFR 9004.3(a) exceeds the amount of the entitlement under 11 CFR 9004.2.

§ 9004.4 Use of Payments.

(a) *Qualified campaign expenses.* An eligible candidate shall use payments received under 11 CFR Part 9005 only for the following purposes:

(1) A candidate may use such payments to defray qualified campaign expenses;

(2) A candidate may use such payments to repay loans that meet the requirements of 11 CFR 100.7(a)(1) or 100.7(b)(11) or to otherwise restore funds (other than contributions received pursuant to 11 CFR 9003.3(b) and expended to defray qualified campaign expenses) used to defray qualified campaign expenses;

(3) A candidate may use such payments to restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period.

(4) *Winding down costs.* The following costs shall be considered qualified campaign expenses:

(i) Costs associated with the termination of the candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies; or

(ii) Costs incurred by the candidate prior to the end of the expenditure report period for which written arrangement or commitment was made on or before the close of the expenditure report period.

(b) *Non-qualified campaign expenses*—(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR 9003.2 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to these limitations using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such

obligations were later settled and paid, unless the committee can demonstrate that the lower amount actually paid reflects the true value of the goods and services received.

(3) *Expenditures incurred after the close of the expenditure report period.* Any expenditures incurred after the close of the expenditure report period, as defined in 11 CFR 9002.12, are not qualified campaign expenses except to the extent permitted under 11 CFR 9004.4(a)(4).

(4) *Civil or criminal penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR Part 9005. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR Part 104.

(5) *Solicitation expenses.* Any expenses incurred by a major party candidate to solicit contributions to a legal and accounting compliance fund established pursuant to 11 CFR 9003.3(a) are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR Part 9005.

§ 9004.5 Investment of public funds.

Investment of public funds or any other use of public funds to generate income is permissible, provided that an amount equal to all net income derived from such investments, less Federal, State and local taxes paid on such income, shall be repaid to the Secretary. Any net loss resulting from the investment of public funds will be considered a non-qualified campaign expense and an amount equal to the amount of such net loss shall be repaid to the United States Treasury as provided under 11 CFR 9007.2(b)(2)(i).

§ 9004.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitations of 11 CFR 9003.2 (a)(1) and (b)(1).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each individual shall not exceed either: the individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

(d)(1) The committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9003.2 (a)(1) and (b)(1) the amount of reimbursements received for the actual cost of transportation and services provided under paragraph (a). The committee may also deduct from the overall expenditure limitation an amount of reimbursements received equal to 3% of the actual cost of tranportation and services provided under this section as the administrative cost to the committee of providing such services to media personnel and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts reimbursed that exceed the amount actually paid by the committee for transportation and services provided under paragraph (a) plus the amount of administrative costs permitted by this section shall be repaid to the Treasury. Amounts paid by the committee for transportation, services and administrative costs for which no reimbursement is received will be considered qualified campaign expenses subject to the overall expenditure limitation in accordance with paragraph (a).

(2) For the purposes of this section, "administrative costs" shall include all costs incurred by the committee for making travel arrangements for media personnel and for seeking reimbursements, whether performed by committee staff or independent contractors.

§ 9004.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR Part 106, expenditures for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9004.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign-related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from the stop through each subsequent campaign-related stop to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified

campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses shall be qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, travelling for campaign purposes shall be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers travelling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 9004.8 Withdrawal by candidate.

(a) Any individual who is not actively conducting campaigns in more than one State for the office of President or Vice President shall cease to be a candidate under 11 CFR 9002.2.

(b) An individual who ceases to be a candidate under this section shall:

(1) No longer be eligible to receive any payments under 11 CFR 9005.2 except to defray qualified campaign expenses as provided in 11 CFR 9004.4.

(2) Submit a statement, within 30 calendar days after he or she ceases to be a candidate, setting forth the information required under 11 CFR 9004.9(c).

§ 9004.9 Net outstanding qualified campaign expenses.

(a) *Candidates receiving post-election funding.* A candidate who is eligible to receive post-election payments under 11 CFR 9004.3 shall file, no later than 20 calendar days after the date of the election, a preliminary statement of that candidate's net outstanding qualified campaign expenses. The preliminary statement shall be signed by the treasurer of the candidate's principal campaign committee. The candidate's net outstanding qualified campaign expenses under this section equal the difference between 11 CFR 9004.9(a) (1) and (2).

(1) The total of:

(i) All outstanding obligations for qualified campaign expenses as of the date of the election; plus

(ii) An estimate of the amount of qualified campaign expenses that will be incurred by the end of the expenditure report period; plus

(iii) An estimate of necessary winding down costs as defined under 11 CFR 9004.4(a)(4); less

(2) The total of:

(i) Cash on hand as of the close of business on the day of the election, including: all contributions dated on or before that date; currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveller's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value;

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the campaign in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(b) *All candidates.* Each candidate, except for individuals who have withdrawn pursuant to 11 CFR 9004.8, shall submit a statement of net outstanding qualified campaign expenses no later than 30 calendar days after the end of the expenditure report period. This statement shall be signed by the treasurer of the candidate's principal campaign committee. The statement shall contain the information required by 11 CFR 9004.9(a) (1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the last day of the expenditure report period.

(c) *Candidates who withdraw.* An individual who ceases to be a candidate pursuant to 11 CFR 9004.8 shall file a statement of net outstanding qualified campaign expenses no later than 30 calendar days after he or she ceases to be a candidate. This statement shall be signed by the treasurer of the candidate's principal campaign committee. The statement shall contain the information required under 11 CFR 9004.9 (a) (1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the day on which the individual ceased to be a candidate.

(d) (1) *Capital assets.* For purposes of this section, the term "capital assets" means any property used in the operation of the campaign whose value exceeds $1000 on the last day of the expenditure report period or the day on which the individual ceases to be a candidate, whichever is earlier. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9004.9(d)(2). The value of a capital asset shall be the fair market value on the last day of the expenditure report period or the day on which the individual ceases to be a candidate whichever is earlier, unless the item is acquired after these dates, in which case the item will be valued on the date it is acquired.

(2) *Other assets.* The term "other assets" means any property acquired by the campaign for use in raising funds or as collateral for campaign loans "Other assets" must be included on the candidate's statement of net outstanding qualified campaign expenses if the aggregate value of such assets exceeds $5000. The value of "other assets" shall be determined by the fair market value of each item on the last day of the expenditure report period or the day on which the individual ceased to be a candidate, whichever is earlier, unless the item is acquired after these dates, in which case the item shall be valued on the date it is acquired.

(e) *Review of candidate statement.*— (1) *General.* The Commission will review the statement filed by each candidate under this section. The Commission may request further information with respect to statements filed pursuant to 11 CFR 9004.9(b) during the audit of that candidate's authorized committee(s) under 11 CFR Part 9007.

(2) *Candidate eligible for post-election funding.* (i) If, in reviewing the preliminary statement of a candidate eligible to receive post-election funding, the Commission receives information indicating that substantial assets of that candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding qualified campaign expenses has been otherwise overstated in relation to campaign assets, the Commission may decide to temporarily postpone its certification of funds to that

candidate pending a final determination of whether the candidate is entitled to all or a portion of the funds for which he or she is eligible based on the percentage of votes the candidate received in the general election.

(ii) *Initial determination.* In making a determination under 11 CFR 9004.9(e)(2)(i), the Commission will notify the candidate within 10 business days after its receipt of the statement of its initial determination that the candidate is not entitled to receive the full amount for which the candidate may be eligible. The notice will give the legal and factual reasons for the initial determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given the opportunity to revise the statement or to submit, within 10 business days, written legal or factual materials to demonstrate that the candidate has net outstanding qualified campaign expenses that entitle the candidate to post-election funds. Such materials may be submitted by counsel if the candidate so desires.

(iii) *Final determination.* The Commission will consider any written legal or factual materials submitted by the candidate before making its final determination. A final determination that the candidate is entitled to receive only a portion or no post-election funding will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(iv) If the candidate demonstrates that the amount of outstanding qualified campaign expenses still exceeds campaign assets, the Commission will certify the payment of post-election funds to which the candidate is entitled.

(v) *Petitions for rehearing.* The candidate may file a petition for rehearing of a final determination under this section in acccordance with 11 CFR 9007.5(a).

§ 9004.10 Sale of assets acquired for fundraising purposes.

(a) *General.* A minor or new party candidate may sell assets donated to the campaign or otherwise acquired for fundraising purposes subject to the limitations and prohibitions of 11 CFR 9003.2, Title 2, United States Code, and 11 CFR Parts 110 and 114. This section will only apply to major party candidates to the extent that they sell assets acquired either for fundraising purposes in connection with his or her legal and accounting compliance fund or when it is necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Sale after end of expenditure report period.* A minor or new party candidate, or a major party candidate in the event of a deficiency in the payments received from the Fund due to the application of 11 CFR 9005.2(b), whose outstanding debts exceed the cash on hand after the end of the expenditure report period as determined under 11 CFR 9002.12, may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of Title 2, United States Code and 11 CFR Parts 110 and 114.

PART 9005—CERTIFICATION BY COMMISSION

Sec.

Authority: 26 U.S.C. 9005 and 9009(b).

§ 9005.1 Certification of payments for candidates.

(a) *Certification of payments for major party candidates.* Not later than 10 days after the Commission determines that the Presidential and Vice Presidential candidates of a major party have met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1 and 9003.2, the Commission shall certify to the Secretary that payment in full of the amounts to which such candidates are entitled under 11 CFR Part 9004 should be made pursuant to 11 CFR 9005.2.

(b) *Certification of pre-election payments for minor and new party candidates.* (1) Not later than 10 days after a minor or new party candidate has met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1, 9003.2 and 9004.2, the Commission will make an initial determination of the amount, if any, to which the candidate is entitled. The Commission will base its determination on the percentage of votes received in the official vote count certified in each State. In notifying the candidate, the Commission will give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based.

(2) The candidate may submit, within 15 days after the Commission's initial determination, written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(c) *Certification of minor and new party candidates for post-election payments.* (1) Not later than 30 days after the general election, the Commission will determine whether a minor or new party candidate is eligible for post-election payments.

(2) The Commission's determination of eligibility will be based on the following factors:

(i) The candidate has received at least 5% or more of the total popular vote based on unofficial vote results in each State;

(ii) The candidate has filed a preliminary statement of his or her net outstanding qualified campaign expenses pursuant to 11 CFR 9004.9(a); and

(iii) The candidate has met all applicable conditions for eligibility under 11 CFR 9003.1 and 9003.2.

(3) The Commission will notify the candidate of its initial determination of the amount, if any, to which the candidate is entitled, give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based. The Commission will also notify the candidate that it will deduct a percentage of the amount to which the candidate is entitled based on the unofficial vote results when the Commission certifies an amount for payment to the Secretary. This deduction will be based on the average percentage differential between the unofficial and official vote results for all candidates who received public funds in the preceding Presidential general election.

(4) The candidate may submit within 15 days after the Commission's initial determination written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(5) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(d) All certifications made by the Commission pursuant to this section shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under 11 CFR Part 9007 and judicial review under 26 U.S.C. 9011.

§ 9005.2 Payments to eligible candidates from the fund.

(a) Upon receipt of a certification from the Commission under 11 CFR 9005.1 for payment to the eligible Presidential and Vice Presidential candidates of a political party, the Secretary shall pay to such candidates out of the Fund the amount certified by the Commission. Amounts paid to a candidate shall be under the control of that candidate.

(b) (1) If at the time of a certification from the Commission under 11 CFR 9005.1, the Secretary determines that the monies in the Fund are not, or may not be, sufficient to satisfy the full entitlements of the eligible candidates of all political parties, he or she shall withhold an amount which is determined to be necessary to assure that the eligible candidates of each political party will receive their pro rata share.

(2) Amounts withheld under 11 CFR 9005.2(b)(1) shall be paid when the Secretary determines that there are sufficient monies in the Fund to pay such amounts, or pro rata portions thereof, to all eligible candidates from whom amounts have been withheld.

(c) Payments received from the Fund by a major party candidate shall be deposited in a separate account maintained by his or her authorized committee, unless there is a deficiency in the Fund as provided under 11 CFR 9005.2(b)(1). In the case of a deficiency, the candidate may establish a separate account for payments from the Fund or may deposit such payments with contributions received pursuant to 11 CFR 9003.3(b). The account(s) shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(d) No funds other than the payments received from the Treasury, reimbursements, or income generated through use of public funds in accordance with 11 CFR 9004.5, shall be deposited in the account described in 11 CFR 9005.2(c). "Reimbursements" shall include, but are not limited to, refunds of deposits, vendor refunds, reimbursements for travel expenses under 11 CFR 9004.6 and 9004.7 and reimbursements for legal and accounting costs under 11 CFR 9003.3(a)(2)(ii)(B).

PART 9006—REPORTS AND RECORDKEEPING

Sec.
9006.1 Separate reports.
9006.2 Filing dates.

Authority: 9006 and 9009(b).

§ 9006.1 Separate reports.

(a) The authorized committee(s) of a candidate shall report all expenditures to further the candidate's general election campaign in reports separate from reports of any other expenditures made by such committee(s) with respect to other elections. Such reports shall be filed pursuant to the requirements of 11 CFR Part 104.

(b) The authorized committee(s) of a candidate shall file separate reports as follows:

(1) One report shall be filed which lists all receipts and disbursements of:

(i) Contributions and loans received by a major party candidate pursuant to 11 CFR Part 9003 to make up deficiencies in Fund payments due to the application of 11 CFR Part 9005;

(ii) Contributions and loans received pursuant to 11 CFR 9003.2(b)(2) by a minor, or new party for use in the general election;

(iii) Receipts for expenses incurred before the beginning of the expenditure report period pursuant to 11 CFR 9003.4;

(iv) Personal funds expended in accordance with 11 CFR 9003.2(c); and

(v) Payments received from the Fund.

(2) A second report shall be filed which lists all receipts of and disbursements from, contributions received for the candidate's legal and accounting compliance fund in accordance with 11 CFR 9003.3(a).

§ 9006.2 Filing dates.

The reports required to be filed under 11 CFR 9006.1 shall be filed during an election year on a monthly or quarterly basis as prescribed at 11 CFR 104.5(b)(1). During a nonelection year, the candidate's principal campaign committee may elect to file reports either on a monthly or quarterly basis in accordance with 11 CFR 104.5(b)(2).

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

Sec.
9007.1 Audits.
9007.2 Repayments.
9007.3 Extensions of time.
9007.4 Additional audits.
9007.5 Petitions for rehearing; stays of repayment determinations.

Authority: 26 U.S.C. 9007 and 9009(b).

§ 9007.1 Audits.

(a) *General.* (1) After each Presidential election, the Commission will conduct a thorough examination and audit of the receipts, disbursements, debts and obligations of each candidate, his or her authorized committee(s), and agents of such candidates or committees. Such examination and audit will include, but will not be limited to, expenditures pursuant to 11 CFR 9003.4 prior to the beginning of the expenditure report period, contributions to and expenditures made from the legal and accounting compliance fund established under 11 CFR 9003.3(a), contributions received to supplement any payments received from the Fund, and qualified campaign expenses.

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9007.1(a) (1) and (2) may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9007.2.

(b) *Conduct of fieldwork.* (1) The Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork will be conducted at a site provided by the committee.

(i) *Office space and records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9003.1(b)(6).

(ii) *Availability of committee personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records

and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to provide staff, records or office space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9010(c) to enforce the candidate and committee agreement made under 11 CFR 9003.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have ten (10) calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreements.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within 10 days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(2) Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance conference.* At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the United States Treasury, will also be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9007.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b) (1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Committee response to audit findings;

(ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to 11 CFR 9007.1 (b)(1);

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9007.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of 11 CFR 9007.1(b) (1) and (2) will apply to any additional fieldwork conducted.

(c) *Preparation of interim audit report.* (1) After the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1), the Commission will issue an interim audit report to the candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, Presidential Election Campaign Fund Act and Commission regulations;

(ii) Accuracy of statements and reports filed with the Commission by the candidate and committee;

(iii) Compliance of the candidate and committee with applicable statutory and regulatory provisions in those instances where the Commission has not instituted any enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR Part 111; and

(iv) Preliminary calculations regarding future repayments to the United States Treasury.

(2) The candidate and his or her authorized committee will have an opportunity to submit in writing within 30 calendar days of service of the interim report, legal and factual materials disputing or commenting on the contents of the interim report. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 CFR 9007.1(c)(2) before approving and issuing an audit report to be released to the public. The contents of the publicly-released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committeee in response to the interim report.

(d) *Preparation of publicly-released audit report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to 11 CFR 9007.1(e). This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9007.2(c)(1) in lieu of the preliminary calculations set forth in the interim report.

(e) *Public release of audit report.* (1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make public the audit report prepared subsequent to the interim report, as provided in 11 CFR 9007.1(d).

(2) If the Commission determines, on the basis of information obtained under the audit and examination process, that certain matters warrant enforcement under 2 U.S.C. 437g and 11 CFR Part 111, those matters will not be contained in the publicly-released report. In such cases, the audit report will indicate that certain other matters have been referred to the Commission's Office of General Counsel.

(3) The Commission will provide the candidate and committee copies of the audit report 24 hours prior to releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based in part on follow-up fieldwork

conducted under 11 CFR 9007.1(b)(3) and will be placed on the public record.

§ 9007.2 Repayments.

(a) *General.* (1) A candidate who has received payments from the Fund under 11 CFR Part 9005 shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9007.1 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the close of the expenditure report period.

(3) Once the candidate receives notice of the Commission's final repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(b) *Bases for repayment.* The Commission may determine that an eligible candidate of a political party who has received payments from the Fund must repay the United States Treasury under any of the circumstances described below.

(1) *Payments in excess of candidate's entitlement.* If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the United States Treasury an amount equal to such portion.

(2) *Use of funds for non-qualified campaign expenses* (i) If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than those described in paragraphs (A) through (C) of this section, it will notify the candidate of the amount so used, and such candidate shall pay to the United States Treasury an amount equal to such amount.

(A) To defray qualified campaign expenses;

(B) To repay loans, the proceeds of which were used to defray qualified campaign expenses; and

(C) To restore funds (other than contributions which were received and expended by minor or new party candidates to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under 11 CFR 9007.2(b)(2) include, but are not limited to the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agent(s) have incurred expenses in excess of the aggregate payments to which an eligible major party candidate is entitled;

(B) Determinations that amounts spent by a candidate, a candidate's authorized committee(s) or agent(s) from the Fund were not documented in accordance with 11 CFR 9003.5;

(C) Determinations that any portion of the payments made to a candidate from the Fund was expended in violation of State or Federal law; and

(D) Determinations that any portion of the payments made to a candidate from the Fund was used to defray expenses resulting from a violation of State or Federal law, such as the payment of fines or penalties.

(iii) In the case of a candidate who has received contributions pursuant to 11 CFR 9003.3(b) or (c), the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for nonqualified campaign expenses as the amount of payments certified to the candidate from the Fund bears to the total amount of deposits of contributions and federal funds, as of December 31 of the Presidential election year.

(3) *Surplus.* If the Commission determines that a portion of payments from the Fund remains unspent after all qualified campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the United States Treasury that portion of surplus funds.

(4) Income on investment of payments from the fund. If the Commission determines that a candidate received any income as a result of investment or other use of payments from the Fund pursuant to 11 CFR 9004.5, it shall so notify the candidate and such candidate shall pay to the United States Treasury an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.

(5) *Unlawful acceptance of contributions by an eligible candidate of a major party.* If the Commission determines that an eligible candidate of a major party, the candidate's authorized committee(s) or agent(s) accepted contributions to defray qualified campaign expenses (other than contributions to make up deficiencies in payments from the Fund, or to defray expenses incurred for legal and accounting services in accordance with 11 CFR 9003.3(a)), it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the United States Treasury an amount equal to such amount.

(c) *Repayment determination procedures.* The Commission repayment determination will be made in accordance with the procedures set forth at 11 CFR 9007.2 (c)(1) through (c)(4).

(1) *Initial determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report pursuant to 11 CFR 9007.1(d) and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days after service of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of written materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30 day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral presentation.* A candidate who has submitted written materials under 11 CFR 9007.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under 11 CFR 9007.2(c)(2). The candidate or representative will also have the opportunity to answer any questions

from individual members of the Commission.

(4) *Final determination.* In making its final repayment determination(s), the Commission will consider any submission made under 11 CFR 9007.2(c)(2) and any oral presentation made under 11 CFR 9007.2(c)(3). A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice of the Commission's initial repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate submits written materials under 11 CFR 9007.2(c)(2) disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 20 calendar days after service of the notice of the Commission's final repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(e) *Computation of time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9007.2(b) after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any initial or final repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding qualified campaign expenses submitted pursuant to 11 CFR 9004.9, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding qualified campaign expenses. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9007.2(f).

(h) *Limit on repayment.* No repayment shall be required from the eligible candidates of a political party under 11 CFR 9007.2 to the extent that such repayment, when added to other repayments required from such candidates under 11 CFR 9007.2, exceeds the amount of payments received by such candidates under 11 CFR 9005.3.

(i) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a final repayment determination in accordance with 11 CFR 9007.5(a). The candidate may request a stay of a final repayment determination in accordance with 11 CFR 9007.5(c) pending the candidate's appeal of that repayment determination.

§ 9007.3 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR Part 9007 will not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR Part 9007 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder shall be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR Part 9007, the Commission may, on the candidate's showing of excusable neglect:

(1) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR Part 9007.

§ 9007.4 Additional audits.

In accordance with 11 CFR 104.16(c), the Commission, pursuant to 11 CFR 111.10, may upon affirmative vote of four members conduct an audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

§ 9007.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final repayment determination or a final determination that a candidate is not entitled to all or a portion of post-election funding under 11 CFR 9004.9(e), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days following service of the Commission's final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the earlier determination process.

(2) If a candidate files a timely petition under this section challenging a Commission final repayment determination, the time for repayment will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9007.2(d)(2) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a

waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's initial determination.

(c) *Stay of repayment determination pending appeal.* (1) The candidate may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9007.2 pending the candidate's appeal of that repayment determination pursuant to 26 U.S.C. 9011(a). A request for a stay shall be made in writing and shall be filed within 20 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) or, if no petition for rehearing is filed, within 20 calendar days after service of the Commission's final repayment determination under 11 CFR 9007.2(c)(4). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(2) The candidate's application for a stay shall demonstrate that:

(i) He or she will suffer irreparable injury in the absence of a stay; and, if so, that

(ii) He or she has made a strong showing of the likelihood of success on the merits of the judicial action;

(iii) Such relief is consistent with the public interest; and

(iv) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the candidate has made a strong showing of the likelihood of success on the merits, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

5. It is proposed to remove § 9012.6 and revise Part 9012 to read as follows:

PART 9012—UNAUTHORIZED EXPENDITURES AND CONTRIBUTIONS

Sec.

Authority: 26 U.S.C. 9012.

§ 9012.1 Excessive expenses.

(a) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a Presidential election or the candidate's authorized committee(s) knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR Part 9004 with respect to such election.

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to incur expenses with respect to a Presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under 11 CFR Part 9008, unless the incurring of such expenses is authorized by the Commission under 11 CFR 9008.7(a)(3).

§ 9012.2 Unauthorized acceptance of contributions.

(a) It shall be unlawful for an eligible candidate of a major party in a Presidential election or any of his or her authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b), or to defray expenses which would be qualified campaign expenses but for 11 CFR 9002.11(a)(3).

(b) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a Presidential election or any of his or her authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred in that election by that eligible candidate or his or her authorized committee(s).

§ 9012.3 Unlawful use of payments received from the fund.

(a) It shall be unlawful for any person who receives any payment under 11 CFR Part 9005, or to whom any portion of any payment so received is transferred, knowingly and willfully to use, or authorize the use of, such payment or any portion thereof for any purpose other than—

(1) To defray the qualified campaign expenses with respect to which such payment was made; or

(2) To repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

(b) It shall be unlawful for the national committee of a major or minor party which receives any payment under 11 CFR Part 9008 to use, or authorize the use of, such payment for any purpose other than a purpose authorized by 11 CFR 9008.6.

§ 9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.

It shall be unlawful for any person knowingly and willfully—

(a) To furnish any false, fictitious, or fraudulent evidence, books or information to the Commission under 11 CFR Parts 9001–9008, or to include in any evidence, books or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books or information relevant to a certification by the Commission or any examination and audit by the Commission under 11 CFR Parts 9001 *et seq.*; or

(b) To fail to furnish to the Commission any records, books or information requested by the Commission for purposes of 11 CFR Parts 9001 *et seq.*

§ 9012.5 Kickbacks and illegal payments.

(a) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expenses of any eligible candidate or his or her authorized committee(s).

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expense incurred by such committee with respect to a Presidential nominating convention.

Dated: July 28, 1986.

Joan D. Aikens,

Chairman, Federal Election Commission.

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Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 272 and 273

Food Stamp Program: Categorical Eligibility for Certain Public Assistance and Supplemental Security Income Recipients; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 276]

Food Stamp Program: Categorical Eligibility for Certain Public Assistance and Supplemental Security Income (SSI) Recipients

AGENCY: Food and Nutrition Service, USDA.
ACTION: Interim rule.

SUMMARY: This rulemaking implements the provision in section 1507 of the Food Security Act of 1985 (Pub. L. 99–198; December 23, 1985) which mandates that households that only contain members who are recipients of public assistance or supplemental security income (SSI) benefits be categorically eligible for food stamp benefits. Categorical eligibility is being tested through September 30, 1989. Certain eligibility provisions of the Food Stamp Act, as amended, continue to apply including the prohibitions against the participation of institutionalized persons, SSI recipients in cash-out States and disqualified persons; and the work registration exemptions.

DATES: This rule is effective retroactively to December 23, 1985. State agencies shall implement the provisions of this rule immediately. Comments must be received on or before October 6, 1986, to be assured of consideration.

ADDRESSES: Comments should be submitted to Bruce A. Clutter, Chief, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 706.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour at the above address, telephone (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and the Secretary of Agriculture's Memorandum No. 1512–1. The Department has classified this action as non-major. The effect of this action on the economy will be less than $100 million and it will have an insignificant effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. *10.551*. For the reasons set forth in the Final Rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Interim Rule

Robert E. Leard, Administrator of the Food and Nutrition Service (FNS), has determined, pursuant to 5 U.S.C. 553, that public comment on this rulemaking prior to implementation is impracticable and contrary to public interest. This rule is effective retroactively to December 23, 1985 because Pub. L. 99–198 specifically requires this effective date. However, because the Department believes that the rule may be improved by public comment, comments are solicited on this rule for 60 days. All comments received will be analyzed and any appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Food Stamp Program. Potential and current participants will be affected because of changes to various program policies and procedures.

Paperwork Reduction Act

The provision at 7 CFR 273.10(g)(1)(ii) requiring the State agency to tell households to inform the State agency of their eligibility for PA or SSI benefits on FNS–442, Action Taken on Your Food Stamp Case, does not alter or change burden estimates for FNS–442 as approved under OMB No. 0584–0064. The remaining provisions of this interim rule do not contain new or additional reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Section 1507(a) of the Food Security Act of 1985 amended Section 5(a) of the Food Stamp Act to mandate categorical eligibility for households containing only recipients of aid to families with dependent children (AFDC) benefits under Title IV–A, SSI (Title XVI), adult assistance under Titles I, X, XIV and XVI (AABD) of the Social Security Act within certain restrictions. This provision expires September 30, 1989. USDA must evaluate the provision and report to Congress on the results of categorical eligibility. This rulemaking does not include any provisions on the evaluation and report as no regulatory revisions are needed to fulfill these requirements.

7 CFR 271.2 of the regulations defines public assistance (PA) as the following programs under Titles I, IV–A, X, XIV, and XVI (AABD) authorized by the Social Security Act of 1935, as amended:

—the AFDC Program
—Old-Age Assistance
—Aid to the Blind
—Aid to the Permanently and Totally Disabled
—Aid to the Aged, Blind or Disabled.

The last four programs are in operation in certain outlying territories instead of the SSI program. Pub. L. 99–198 includes all of the programs in this definition as well as the SSI program as subject to categorical eligibility.

For the purposes of this rulemaking, the term "recipients" includes those authorized to receive PA or SSI benefits. "Authorized to receive" means that an individual is considered a recipient if he or she has been determined eligible for PA or SSI benefits but that the PA or SSI benefits have not yet been paid. Therefore, any household with only members receiving or authorized to receive PA or SSI benefits is to be considered a "pure" PA/SSI household and is therefore categorically eligible if it meets the other conditions for categorical eligibility described in this rule. In addition, the term "recipient" includes persons determined eligible to receive zero benefits, e.g., persons whose benefits are being recouped and AFDC recipients whose benefits are less than $10 and are therefore not payable. In other words, to be categorically eligible, a pure PA/SSI household does not necessarily have to receive a PA/SSI check. Individuals entitled only to Medicaid and not public assistance are

not categorically eligible. Also, a household may be considered categorically eligible even if it contains both PA and SSI recipients.

Legislative Restrictions

The legislation specifies that the following provisions of the Food Stamp Act still apply to PA/SSI households that might otherwise be considered categorically eligible:

1. The disqualification requirements for persons who committed intentional program violations (section 6(b)). The legislative history (Senate Report 99–145, pp. 243–244; House Report 99–271, pp. 141–142; and House Conference Report 99–447, p. 521) clarifies the legislative provision by referring to all of the food stamp disqualification provisions, including failure to comply with the work-related or monthly reporting requirements and ineligibility due to alien or student status.

2. The work registration exemptions (section 6(d)(2)).

3. The restriction that SSI recipients in cash-out States are not eligible for food stamps because their State supplemental benefits are increased to compensate the recipient for food stamp benefits (section 6(g)).

4. The prohibition against persons in institutions receiving food stamps because their meals are provided by the institution (section 3(i)).

The specifics on how these restrictions are applied are discussed later in this preamble.

Joint Processing and Categorical Eligibility

Pub. L. 99–198 did not alter the provision in the Act requiring a single interview to determine eligibility for initial applicants for both PA and food stamps. The regulations at 7 CFR 273.2(j) implement this statutory provision. This rule revises that section, 7 CFR 273.2(j), to differentiate between the provisions on joint processing for households applying simultaneously for PA and food stamp benefits and the provisions on categorical eligibility for pure PA/SSI households.

The title of 7 CFR 273.2(j) is changed to "PA, GA, and categorically eligible households" to reflect the inclusion of procedures on categorically eligible households. Current regulations at 7 CFR 273.2(k), on joint processing for SSI cases, are revised to discuss how pure SSI households that are categorically eligible are to be handled. This provision will refer back to the applicable provisions in § 273.2(j) but will also explain any special criteria that apply to SSI households.

Introductory Text—§ 273.2(1)

The introductory text to § 273.2(j) is revised to explain that households applying for PA and food stamp benefits simultaneously are subject to the food stamp eligibility, processing, and benefit determination provisions but that categorically eligible PA/SSI households are handled differently because they are exempt from certain eligibility factors. The definition of recipient discussed earlier is also contained in this paragraph. The paragraph is also revised to explain that general assistance households may be jointly processed but shall not be considered categorically eligible.

Applicant PA Cases—§ 273.2(j)(1)(iv)

The title of paragraph § 273.(j)(1) is revised to reflect the discussion in the revised paragraph (j)(1)(iv) which establishes a procedure on how a jointly processed application is handled given the possibility that a case could turn out to be categorically eligible. The procedure would also apply if the household informed the eligibility worker that it had separately filed an application for PA or SSI benefits and that application was pending. The State agency may temporarily delay making a determination on a case with a pending PA application which appears to be potentially categorically eligible unless the household is entitled to expedited service. However, the application shall not be delayed beyond the 30th day from the date the food stamp application was filed awaiting the determination on eligibility for PA and/or SSI benefits.

If, by the 30th day from the date the food stamp application was filed, the household is determined eligible for food stamps based on categorical eligibility, food stamps would be provided back to the date of the food stamp application. If the potentially categorically eligible household is *ineligible* for food stamps, the State agency shall not take action to deny the case before the 30th day pending a decision on the household's eligibility for PA and/or SSI benefits. This is to avoid filing and processing an additional application. If the decision on the household's eligibility for PA and/or SSI benefits is not made by the 30th day, the State agency must process the case as a nonpublic assistance (NPA) food stamp case within all of the Food Stamp Program's eligibility and benefit criteria and provide benefits, if appropriate, in accordance 7 CFR 273.2(g)(1). A denied household which is potentially categorically eligible shall be told on the notice of denial to inform the State agency of its PA and/or SSI eligibility. The State agency shall ensure that the denied application of any potentially categorically eligible household is easily retrievable.

If the jointly processed household is found to be ineligible for food stamps as an NPA case but is later found to be eligible for PA and/or SSI benefits and is otherwise categorically eligible, the State agency must reevaluate the household's entitlement to food stamp benefits based on the original food stamp application and any pertinent changes that occurred since the application was filed. The State agency shall not require the household to be reinterviewed but shall update the application from other available information and/or through phone or mail contact with the household or authorized representative. If there are significant changes, the State agency shall have the household initial changes on the original application and resign and redate the application. The reevaluation would be done either at the household's request or when the State agency otherwise becomes aware of the household's eligibility for PA and/or SSI benefits. Households originally denied food stamps, but later determined categorically eligible using the same application, would be considered eligible to receive food stamps from the beginning of the period for which the PA and/or SSI benefits are paid. PA benefits are generally paid back to one of the following dates: (1) The date of application for PA benefits or (2) the date assistance is authorized. In no event, however, can food stamp benefits be provided prior to the date of the original food stamp application made on or after December 23, 1985. Restored benefits, if appropriate, would be provided for cases found categorically eligible after their initial food stamp application was denied. If the State agency delays determining eligibility on a jointly processed case until the PA decision is made and the household is determined PA eligible in the initial 30-day processing time, a categorically eligible household shall be provided benefits only back to the date of the food stamp application. Benefits would be prorated in accordance with 7 CFR 273.10 (a)(1)(ii) and (e)(2)(ii)(B). The food stamps for households originally denied NPA food stamps would be prorated for the initial month of their categorical eligibility from the date the PA benefits are payable or the date of original food stamp application, whichever is later.

To be consistent with the procedure above which provides an ineligible household that becomes categorically eligible with retroactive benefits for the

period for which the PA and/or SSI benefits are authorized, we must address how to handle eligible households which become SSI recipients and thus are entitled to the medical and uncapped shelter deductions in 7 CFR 273.9 (d)(3) and (d)(5). Because categorical eligibility is considered to have started at the beginning of the period for which the SSI benefits are authorized or the date of the food stamp application, whichever is later, entitlement to the special deductions should also begin at that time. We are therefore amending § 273.10(d) on determining deductions by adding a new paragraph (7) to explain that persons entitled to the special deductions would be eligible to receive them from the beginning of the period for which their SSI was authorized or the date of their food stamp application, whichever comes later. In addition, any denied household that becomes categorically eligible will also have its benefits restored based on entitlement to the special deductions.

Categorically Eligible Households—273.2(j)(2)(i)

The current paragraph 7 CFR 273.2(j)(2) on GA households is renumbered as § 273.2(j)(3) and the new paragraph (j)(2) discusses how to handle PA and/or SSI households that are or appear to be categorically eligible. This paragraph explains exactly what factors are accepted for food stamp eligibility without further verification. These factors are resources, gross and net income, information about the social security numbers of the household members, residency, and sponsored aliens. Factors relating to benefit determination, however, that are not verified for PA or SSI purposes (such as income disregarded for PA or SSI purposes but not for food stamps) must be verified if required under 7 CFR 273.2(f). The State agency is required to verify household composition in accordance with the regulations at 7 CFR 273.2(f) if it is questionable that the household is a pure PA/SSI household. The State agency must also verify that all persons who must be considered as members of a food stamp household are correctly included and that any member who must be excluded is properly handled. If the citizenship or alien status of a member is in question, the State agency must verify status in accordance with 7 CFR 273.2(f) (1)(ii) and (2)(ii). The State agency must assure that any person included as a household member in a categorically eligible household meets the qualifications in 7 CFR 273.4(a) on citizenship and alien status. Further, the State agency cannot allow a person or household disqualified from receiving food stamps to participate in the Food Stamp Program simply because of categorical eligibility. It is particularly important that the State agency properly apply all of the *food stamp* household provisions from 7 CFR 273.1(a)–(c) when establishing if a group of people is categorically eligible. For example, the PA assistance unit may not include everyone who should be considered a food stamp household member. Also, there may be two or more PA assistance units separately receiving PA benefits that may be categorically eligible but must be considered as one food stamp household because food is purchased and prepared in common.

The AFDC program may suspend a case subject to retrospective budgeting under 45 CFR 233.34(d) when the household is temporarily ineligible in a prior budget month. This is done primarily when the household has extra income that temporarily makes it unentitled to benefits. The suspension is to avoid administrative problems with switching the household to prospective budgeting. For food stamp purposes, if such a household is otherwise eligible, suspension by AFDC does not affect their categorical eligibility.

Institutionalized Persons—273.2(j) (i) and (iii)

Paragraph (j)(2)(ii) explains that no household that resides in a nonexempt institution, as discussed in 7 CFR 273.1(e), can be considered categorically eligible. Paragraph (j)(2)(iii)(D) prohibits any *person* residing in a nonexempt institution from participating. Any household which is a pure PA/SSI household is still considered categorically eligible even though it contains one or more persons who would otherwise be considered household members but who are institutionalized. The income and resources of the institutionalized person are not considered available to the remaining household members in accordance with 7 CFR 273.11(d). However, if the institutionalized member returns to the household, the household circumstances must be reevaluated to assure that it remains categorically eligible and that its benefits are properly calculated.

Individuals Disqualified for Intentional Program Violations—273.2(j)(2)(ii)(A)

This paragraph explains how to handle those households that cannot be considered categorically eligible because one or more members have been disqualified for an intentional Program violation (IPV). The statute specifies that the provision on disqualification for an IPV would still apply to categorically eligible households. In addition, both House Report 99–271, p. 142, and House Conference Report 99–447, p. 521, direct the Department to apply a "rule of reason" when developing the regulations on categorical eligibility so that households could not be reinstated in the program solely on the basis of categorical eligibility when a member has been disqualified for an IPV. In these situations, the nondisqualified members of the household could participate if otherwise eligible but could not participate solely on the basis of categorical eligibility. Otherwise, a household which was ineligible under the income and/or resource standards could become categorically eligible simply because its only non-AFDC/SSI member commits an IPV. Treatment of the income and resources of the disqualified member will continue to be handled in accordance with 7 CFR 273.11(c)(1).

Disqualified Households—273.2(j)(2)(ii) (B) and (C)

The legislative history (Senate Report 99–145, p. 244, House Report 99–271, p. 142, and House Conference Report 99–447, p. 521) also states that households disqualified due to a violation of food stamp rules, other than an IPV, are not to be reinstated due to categorical eligibility. Therefore, any household disqualified for failure to comply with any of the work registration, job search, voluntary quit, workfare, or monthly reporting requirements would be ineligible as required in 7 CFR 273.7 or 273.21, as appropriate, regardless of their categorically eligible status. The ineligibility of these households is provided for in § 273.2(j)(2)(ii) (B) and (C).

Households with Ineligible Aliens—273.2(j)(2)(iii)(A) Households containing ineligible aliens (considered nonhousehold members) would still be categorically eligible if they meet all the requirements. The presence of an ineligible alien would not preclude the remaining household members from being considered categorically eligible because, under section 6(f) of the Food

Stamp Act, the ineligible alien is not a member of the household. Section 273.2(j)(2)(iii)(A) contains this policy. Treatment of the income and resources of the ineligible alien will continue to be handled under 7 CFR 273.11(c)(2).

Ineligible Students and SSI Recipients in Cash-Out States—273.2(j)(2)(iii) (B) and (C) Similarly, under § 273.2(j)(2)(iii) (B) and (C) of this rule, groups which contain a member who is an ineligible student or is an SSI recipient in a cash-out State can be categorically eligible because the ineligible student or SSI recipient is not considered a household member under sections 6(e) and (6)(g) of the Food Stamp Act. The income and resources of these types of ineligible members are disregarded for the purposes of an eligibility determination as discussed in 7 CFR 273.11(d).

Work Registration Exemptions—273.2(j)(2)(iv)

The Food Security Act specified that the Food Stamp Program's work registration exemptions be used for categorically eligible cases. Paragraph (j)(2)(iv) states that the work registration exemptions in 7 CFR 273.7(b) are to be applied to members of a categorically eligible household. Many persons in categorically eligible households would be exempt from work registration because of AFDC work registration, age or disability. However, persons not exempt for these reasons or the other exemptions must meet the food stamp work requirements in 7 CFR 273.7. If any member required to work register, etc., fails to comply, the entire household is disqualified from the Food Stamp Program and thus loses its categorical eligibility.

Application Processing and Benefit Determination—273.2(j)(2)(v)

Pub. L. 99-198 did not revise any of the food stamp processing time frames, the requirements on interviews (including a single interview at application and recertification for jointly processed cases), certification periods and expedited service for categorically eligible households. To the extent possible, food stamp certification periods and PA redetermination periods should coincide which is current policy. Also, the benefit determination uses food stamp rules so the food stamp income inclusions and exclusions, deductions, and methods of determining net income are followed. However, the net income eligibility limits do not apply. Therefore, any one and two person households that are categorically eligible are entitled to at least $10. Categorically eligible households with three or more members will be entitled to benefits of at least $2 if the Thrifty Food Plan reduced by thirty percent of their net income is at least $1. Pure PA/SSI households with three or more members will be automatically entitled to a benefit determination but not necessarily to receive food stamp benefits because of the way benefit levels are calculated. A household eligible for zero benefits cannot be denied but must be suspended in accordance with 7 CFR 273.10(e)(2)(iii)(B).

Even though a PA redetermination is not timely completed for a pure PA/SSI household, the food stamp recertification must be completed in accordance with 7 CFR 273.14. Categorical eligibility is assumed in the absence of a timely PA redetermination but the food stamp calculation must be made at the time of recertification. The provisions on the deeming of certain eligibility factors, the verification provisions and the benefit determination continue to apply to categorically eligible households at recertification. If the household is subsequently terminated from PA benefits, the State agency shall follow the procedures in 7 CFR 273.12(f) (3), (4), and (5), as appropriate.

Pure PA/SSI households are exempt from the food stamp resource and gross income and net income limits but they must meet all of the food stamp criteria concerning benefit determination and have all the rights of an NPA household. Because eligibility under the Food Stamp Program's resource, gross and net income limits are "deemed," households may exceed the food stamp resource or income limits and still be eligible due to their PA/SSI status.

New paragraph § 273.2(j)(2)(v) specifies that the food stamp procedures for determining benefits must be followed and lists only those provisions that do not apply. This is in accordance with the legislative history, House Report 99-271 and Senate Report 99-145. Both reports state that benefits must continue to be calculated using food stamp rules.

Other food stamp provisions that would apply to categorically eligible households are those on fair hearings, disqualification for intentional program violations, restoration of lost benefits and claims collection procedures.

Reporting changes after certification for categorically eligible households not subject to monthly reporting would be in accordance with 7 CFR 273.12(f). Basically, a household reporting a change to its PA worker is considered to have reported the change for food stamp purposes. SSI recipients not subject to monthly reporting must report changes in accordance with 7 CFR 273.12(a). Households subject to monthly reporting must meet the requirements in 7 CFR 273.21. The State agency would act on any changes affecting food stamp benefit levels but is not required to act on changes reported by categorically eligible households in the areas of resources or other *eligibility* factors. Mass changes for categorically eligible households are handled in accordance with 7 CFR 273.12(e).

Categorically eligible households that receive food stamp benefits are subject to all of the post-certification procedures and are recertified in accordance with food stamp procedures. The provisions on jointly processed cases in 7 CFR 273.2(j)(1) and 273.14(a) apply at recertification, so that much of the information used to redetermine eligibility for PA benefits could be used for food stamp recertification. Also, the food stamp disqualification and claims recovery rules apply to categorically eligible households, as do the rules on fair hearings, restored benefits and notices. Because these households are receiving food stamp benefits, they are responsible for providing accurate information and are penalized accordingly for failure to provide such information. A food stamp claim is filed if the household is subject to a claim in accordance with 7 CFR 273.18. However, a claim could only be filed against a categorically eligible household subject to termination of its PA and/or SSI benefits after the PA and/or SSI adjustment(s) were made. If appropriate, the disqualification procedures in 7 CFR 273.16 would also apply. In addition, these households have the same rights as the NPA caseload to fair hearings and, if appropriate, continued benefits, adequate notice about changes, and restoration of lost benefits.

Categorical Eligibility for SSI Households—273.2(k)

The same procedures discussed above for PA households are applicable for SSI households including the definition of recipient, the benefit entitlement period and the reevaluation procedures. Section 273.2(k) is revised to refer back to the provisions in § 273.2(j) on PA categorical eligibility. As mentioned earlier, the State agency is required to ensure that any denied application of a potentially categorically eligible household is easily retrievable so that the household may be reevaluated for food stamp purposes. The reevaluation is to be done either at the household's request or when the State agency

becomes aware of the household's eligibility for PA or SSI benefits. For SSI cases, we urge State agencies to use the State data exchange (SDX) system to determine if the household members' SSI application has been approved or denied. We understand that SDX information is made available for Medicaid eligibility purposes and that the disposition of all applications including denials are promptly posted (within 10 days) and are available, at a minimum, on a monthly basis in each State.

Technical Amendments

Section 273.8(a) is being revised to delete the reference to the State agency option to make AFDC recipients categorically eligible for resources. Rather, the provision will explain that categorically eligible households are not subject to the resource limits and definitions. In § 273.9(a), a new sentence is added to clarify that the gross and net income eligibility standards do not apply to categorically eligible households. In § 273.10(g)(1)(ii), a new sentence is added explaining that the notice of denial must inform the household to notify the State agency of its approval to receive PA or SSI benefits in case the household is categorically eligible.

Quality Control

Currently, quality control (QC) does not cite a variance in resources if a household is properly subject to the optional resource categorical eligibility. This is true even if the household's non-excluded resources exceed the Food Stamp Program's limit. QC does this because the eligibility element of resources is superseded by categorical eligibility. The Department is continuing this principle to the new mandatory categorical eligibility.

To review categorical eligibility, QC must first verify the household's correct composition as of the review date. QC must then verify whether, all actual household members received or were authorized to receive AFDC or SSI. If the household was entitled to categorical eligibility, QC need not review those elements of eligibility which are superseded by categorical eligibility. Variances cannot exist in these elements. QC is required only to review the remaining elements of eligibility and the elements of benefit level.

If the household was not entitled to categorical eligibility, QC must review all elements of eligibility and benefits. For example, if QC discovers an unreported member who received neither AFDC nor SSI, categorical eligibility would not have applied. QC would then review resources and all other elements for all members of the household.

Because categorical eligibility applies only to the elements of eligibility, QC must review benefit levels. QC must verify the household's gross income, deductions, and net income. In the event QC verified an incorrect allotment for a categorically eligible household, QC would cite a variance. As an example, QC may review a household and verify that all members received AFDC in the sample month and were thus categorically eligible. However, QC may also verify an unreported source of non-excluded income that raises the household's income and which resulted in an overissuance of benefits. QC would not cite an eligibility variance but would cite a benefit variance.

Implementation

As stated earlier, categorical eligibility was effective December 23, 1985 upon enactment of the Food Security Act. State agencies shall implement these rule changes immediately upon publication in order to promptly come into compliance with the law. The provisions in this rule shall be implemented for all eligibility determinations made on or after the date of publication. State agencies shall provide restored benefits to any household which filed an application between December 23, 1985 and implementation and which would have been determined eligible for food stamps based on categorical eligibility and entitled to benefits but was denied. The State agency must review any denial which occurred after December 23, 1985 if the household requests a review on the grounds that it was categorically eligible or when the State agency otherwise becomes aware that a case was denied that would have been categorically eligible. If it is determined that any such household was, in fact, categorically eligible, appropriate restored benefits will be made available back to the date of application or December 23, 1985, whichever is later. A case file review is not required.

We recognize, however, that this immediate implementation schedule may cause some difficulties with QC reviews. Therefore, for QC purposes only, we are allowing State agencies additional time to come into compliance with the provisions of this rule. For the period between publication and the first of the month following 30 days after publication, QC need not identify variances resulting solely from the State agency's implementation or non-implementation of this rule.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2029).

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(78) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(78) *Amendment 276.* (i) This rule is effective retroactively to December 23, 1985. Any household that applied and was denied benefits from that date until implementation of this rule is entitled to restored benefits if it:

(A) Was categorically eligible as defined in this rule;

(B) Is otherwise entitled to benefits; and

(C) Requests a review of its case or if the State agency otherwise becomes aware that a review is needed.

Restored benefits for these households shall be made available, if appropriate, in accordance with § 273.17 back to the date of the food stamp application or December 23, 1985, whichever is later. The State agency shall implement the changes in this rule immediately upon publication and any eligibility determination or issuance made on or after that date shall be made in accordance with this rule.

(ii) For quality control (QC) purposes only, QC is not required to identify variances resulting solely from either implementation or non-implementation of this rule between publication and October 1, 1986.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.2 [Amended]

3. In § 273.2:

a. Introductory paragraph (j) is revised in its entirety.

b. The title to paragraph (j)(1) is revised.

c. Paragraph (j)(1)(iv) is amended by:

(1) Revising the first two sentences and adding a new sentence after the second sentence.

(2) Revising the seventh sentence which begins with the phrase, "However, the State agency is not required . . ." and adding twelve new sentences after the seventh sentence.

d. Paragraphs (j)(2) and (j)(3) are redesignated as (j)(3) and (j)(4).

e. A new paragraph (j)(2) is added.

f. The introductory text of newly redesignated paragraph (j)(3)(i) is amended by adding the phrase "except for procedures concerning categorical eligibility" after the words "GA households".

g. Newly redesignated paragraph (j)(3)(ii), is amended by changing the reference to "paragraph (j)(2)(i)" to "paragraph (j)(3)(i)" and by adding the phrase "except for procedures concerning categorical eilgibility" immediately before the period at the end of paragraph (j)(3)(ii).

h. The first sentence of newly redesignated paragraph (j)(4) is amended by changing the reference from "(j)(2)" to "(j)(3)" and by adding the phrase ", except for procedures concerning categorical eligibility" immediately before the period at the end of the first sentence.

i. The third sentence of introductory paragraph (k) is removed and three new sentences are added in its place.

The revisions and additions read as follows:

§ 273.2 Application processing.

* * * * *

(j) *PA, GA, and categorically eligible households.* Households in which all members are applying for public assistance (PA) shall be allowed to apply for food stamp benefits at the same time they apply for PA benefits. These households' food stamp eligibility and benefit levels shall be based solely on food stamp eligibility criteria. However, any household in which all members are recipients of PA and/or SSI benefits shall be considered eligible for food stamps because of their PA/SSI status in accordance with § 273.2(j)(2). Recipients include individuals authorized to receive PA and/or SSI benefits but who have not yet received payment. In addition, persons are considered recipients if their PA or SSI benefits are suspended or recouped. Persons entitled to PA benefits but who are not paid such benefits because the grant is less than $10 are also considered PA recipients. Persons not receiving PA or SSI benefits who are entitled to Medicaid only shall *not* be considered recipients. Households, whether jointly processed and/or eligible because of their PA/SSI status, shall be certified in accordance with the notice, procedural and timeliness requirements of the food stamp regulations. Households in which all members are applying for State agency administered general assistance (GA) shall, at a minimum, be provided with applications for food stamp benefits and be referred to the appropriate food stamp office for an eligibility determination under certain circumstances, these households may be able to apply jointly for their GA and food stamp benefits but shall not be considered categorically eligible for food stamps.

(1) *Applicant PA households.* * * *

(iv) In order to determine if a household will be eligible due to its status as a recipient PA/SSI household, the State agency may temporarily postpone, within the 30-day processing standard, the food stamp eligibility determination if the household is not entitled to expedited service and appears to be categorically eligible. However, the State agency shall postpone denying a potentially categorically eligible household until the 30th day in case the household is determined eligible to receive PA benefits. Once the PA application is approved, the household is to be considered categorically eligible if it meets all the criteria concerning categorical eligiblity in § 273.2(j)(2). * * * However, the State agency is not required to send a notice of adverse action if the receipt of the PA grant reduces, suspends or terminates the household's food stamp benefits, provided the household is notified in advance that its benefits may be reduced, suspended, or when the grant is received. The case may be terminated if the household is not categorically eligible. The State agency shall ensure that the denied application of a potentially categorically eligible household is easily retrievable. For a household filing a joint application for food stamps and PA benefits or a household that has a PA application pending and is denied food stamps but is later determined eligible to receive PA benefits and is otherwise categorically eligible, the State agency shall provide benefits using the original application and any other pertinent information occurring subsequent to that application. Benefits shall be paid from the beginning of the period for which PA benefits are paid, the original food stamp application date or December 23, 1985, whichever is later. The State agency shall not reinterview the household but shall use any available information to update the application and/or make mail or phone contact with the household or authorized representative to determine any changes in circumstances. Any changes shall be initialed and the updated application resigned by the authorized representative or authorized household member. In no event can benefits be provided prior to the date of the original food stamp application filed on or after December 23, 1985. Any household determined PA eligible which is categorically eligible within the 30-day food stamp processing time shall be provided benefits back to the date of the food stamp application. Benefits shall be prorated in accordance with § 273.10 (a)(1)(ii) and (e)(2)(ii)(B). Households that file joint applications that are found categorically eligible after being denied NPA food stamps shall have their benefits for the initial month prorated from the date from which the PA benefits are payable, or the date of the original food stamp application, whichever is later. The State agency shall act on reevaluating the original application either at the household's request or when it becomes otherwise aware of the household's PA and/or SSI eligibility. The household shall be informed on the notice of denial required by § 273.10 (g)(1)(ii) to notify the State agency if its PA or SSI benefits are approved. * * *

* * * * *

(2) *Categorically Eligible Households.* (i) Any household (except those listed in (ii) below) in which all members receive or are authorized to receive PA and/or SSI benefits shall be considered eligible for food stamps because of their status as PA and/or SSI recipients unless the entire household is institutionalized as defined in § 273.1(e) or disqualified for any reason from receiving food stamps. The eligibility factors which are deemed for food stamp eligibility without the verification required in § 273.2(f) because of PA/SSI status are the resource, gross and net income limits; social security number information; sponsored alien information; and residency. If any of the following factors are questionable, the State agency shall verify, in accordance with § 273.2(f), that the household which is considered categorically eligible: (A) contains only members that are PA or SSI recipients as defined in the introductory paragraph § 273.2(j); (B) meets the household definition in § 273.1(a); (C) includes all persons who purchase and prepare food together in one food stamp household regardless of whether or not they are separate units for PA or SSI purposes; and (D) includes no persons who have

been disqualified as provided for in paragraph (ii) of this subsection. Households subject to retrospective budgeting that have been suspended for PA purposes as provided for in Aid to Families with Dependent Children (AFDC) regulations, or that receive zero benefits shall continue to be considered as authorized to receive benefits from the appropriate agency. Categorical eligibility shall be assumed at recertification in the absence of a timely PA redetermination. If a recertified household is subsequently terminated from PA benefits, the procedures in § 273.12(e) (3), (4), and (5) shall be followed, as appropriate.

(ii) Under no circumstances shall any household be considered categorically eligible if any member of that household is disqualified for: (A) an intentional Program violation in accordance with § 273.16; (B) Failure to comply with monthly reporting requirements in accordance with § 273.21; or (C) Failure to comply with the work requirements in accordance with § 273.7. These households are subject to all food stamp eligibility and benefit provisions.

(iii) No person shall be included as a member in any household which is otherwise categorically eligible if that person is——

(A) An ineligible alien as defined in § 273.4;

(B) Ineligible under the student provisions in § 273.5;

(C) An SSI recipient in a cash-out State as defined in § 273.20; or

(D) Institutionalized in a nonexempt facility as defined in § 273.2.

(iv) For the purposes of work registration, the exemptions in § 273.7(b) shall be applied to individuals in categorically eligible households. Any such individual who is not exempt from work registration is subject to the other work requirements in § 273.7.

(v) When determining eligibility for a categorically eligible household all provisions of this subchapter except for those listed below shall apply:

(A) Section 273.8 except for the last sentence of paragraph (a).

(B) Section 273.9(a) except for the fourth sentence in the introductory paragraph.

(C) Section 273..10(a)(1)(i).

(D) Section 273.10(b).

(E) Section 273.10(c) for the purposes of eligibility.

(F) Section 273.10(e)(2)(iii)(A).

* * * * *

(k) *SSI households.* * * * Households applying simultaneously for SSI and food stamps shall be subject to food stamp eligibility criteria, and benefit levels shall be based solely on food stamp eligibility criteria until the household is considered categorically eligible. However, households in which all members are either PA or SSI recipients or authorized to receive PA or SSI benefits as defined in § 273.2(j) shall be food stamp eligible based on their PA/SSI status as provided for in § 273.2(j)(1)(v) and (j)(2). Households denied NPA food stamps that have an SSI application pending shall be informed on the notice of denial of the possibility of categorical eligibility if they become SSI recipients.

* * * * *

4. In § 273.8, the last sentence in paragraph (a) is removed and a new sentence added in its place to read as follows:

§ 273.8 Resource eligibility standards.

(a) *Uniform Standards.* * * * Households which are categorically eligible as defined in § 273.2(j)(2) do not have to meet the resource limits or definitions in this section.

* * * * *

5. In § 273.9(a), introductory paragraph (a) is amended by adding a new sentence after the third sentence to read as follows:

§ 273.9 Income and deductions.

(a) *Income eligibility standards.* * * * Households which are categorically eligible as defined in § 273.2(j)(2) do not have to meet either the gross or net income eligibility standards. * * *

* * * * *

6. In § 273.10:

(a) A new paragraph (d)(7) is added.

(b) In (g)(1)(ii), a new sentence is added between the second and third sentences.

The additions read as follow:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* * * *

(7) Individuals entitled to the excess medical deduction under § 273.9(d)(3) and the uncapped shelter expense in § 273.9(d)(5) shall receive such deductions, if they incur such expenses. for the period for which they are authorized to receive SSI benefits or the date of the food stamp application, whichever is later as discussed in § 273.2(j). Such individuals who are entitled to restored benefits in accordance with § 273.2(j)(1)(iv) shall have their benefits restored using these special deductions if they have such expenses.

* * * * *

(g) *Certification notices to households*—(1) *Initial applications.*

* * *

(ii) * * * A household which is potentially categorically eligible but whose NPA food stamps are denied shall be asked to inform the State agency if it is approved to receive PA and/or SSI benefits. * * *

* * * * *

Dated: July 29, 1986.

Sonia F. Crow,

Acting Administrator, Food and Nutrition Service.

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Tuesday
August 5, 1986

Part IV

Department of the Interior

National Park Service

36 CFR Parts 60 and 63

National Register of Historic Places; Proposed Rule

DEPARTMENT OF THE INTERIOR

36 CFR Parts 60 and 63

National Register of Historic Places

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule describes the procedures which implement the requirements of the National Historic Preservation Act of 1966, as amended, ("the Act") concerning the responsibility of the Secretary of the Interior for the identification of properties of historic and archeological significance through listing in, and determination of eligibility for inclusion in, the National Register of Historic Places. This proposed rule is necessary in order to consolidate and update the procedures now contained in 36 CFR Part 60, National Register of Historic Places, and 36 CFR Part 63, Determinations of Eligibility for Inclusion in the National Register of Historic Places. The intended effect of this action is to clarify, streamline, and bring up-to-date the various administrative procedures for identification of historic and archeological properties.

DATE: Comments should be submitted by October 6, 1986.

ADDRESSES: Send comments to Stephen M. Sheffield, Interagency Resources Division, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127.

FOR FURTHER INFORMATION CONTACT: Stephen M. Sheffield, Interagency Resources Division, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013–7127. Telephone No. (202) 343–9500.

SUPPLEMENTARY INFORMATION: The purpose of the National Register of Historic Places is to identify districts, sites, buildings, structures, and objects associated with American history, architecture, archeology, engineering and culture that have met stringent significance criteria. These properties are worthy of consideration for preservation. The Secretary of the Interior maintains this list under the authority of section 101 (a)(1)(A) of the Act. The National Register exists to aid in preservation of properties that are significant, in part, because of their linkage to, and integrity with, their surroundings, and thus are vulnerable in a way that items removable to archives are not.

Federal agencies, State and local governments, and private individuals participate in the process of identifying and evaluating properties for the National Register. The various roles and specific responsibilities of those participants in the National Register process are described in these proposed regulations.

36 CFR Part 60, National Register of Historic Places, describes the procedures for nominating and listing properties in the National Register. It also describes related actions such as revisions to documentation, removals from the National Register, public requests for action, and appeals to the Keeper of the National Register. 36 CFR Part 63, Determinations of Eligibility for Inclusion in the National Register of Historic Places, describes the procedures for Federal agency requests for determinations of eligibility for properties that may be affected by Federal, federally assisted, or federally licensed undertakings pursuant to the requirements of section 106 of the Act.

Although some of the consequences of listing properties in the National Register and determining the eligibility of properties for inclusion in the National Register differ as further described in these procedures, both processes involve decisions concerning historic significance based on the same criteria. For this reason, the procedures in Parts 60 and 63 are being combined into one rule. Furthermore, the content of these proposed procedures has been revised because of the need to simplify and clarify National Register processes for the broad range of Federal, State, local and private participants now involved in Federal preservation activities.

Under the Act, Federal agencies and participating State governments have specific historic preservation responsibilities. Federal Preservation Officers and State Historic Preservation Officers are designated by Federal agencies and State governments to fulfill these responsibilities. In meeting the requirement to identify, evaluate, and nominate properties to the National Register, the State Historic Preservation Officers and Federal Preservation Officers apply the National Register criteria to properties which may be eligible within their respective areas of jurisdiction. At the State level, a State Review Board made up of professionals in historic preservation related disciplines advises the State Historic Preservation Officer during the nomination process.

To ensure high professional standards, the National Park Service requires that each State develop expertise in the disciplines of history, architectural history, archeology, and historical architecture on the State staff and State Review Board. Nominations are prepared under the supervision of the State Historic Preservation Officer and that official's professional staff in accordance with an approved Statewide Comprehensive Historic Preservation Plan which is intended to serve as a resource management and planning system. Setting priorities for the nomination of properties consistent with the Statewide Comprehensive Historic Preservation Plan is the responsibility of the State Historic Preservation Officer.

Federal agencies obtain qualified personnel either by having professional staffs or obtaining the services of professionals to prepare nominations. Although Federal agencies do not have to obtain State approval, Federal nominations are sent to the appropriate State Historic Preservation Officer for review and comment concerning the property's eligibility for the National Register.

Because of the considerable experience and ability of the States and Federal agencies in identifying and evaluating historic properties, and based on provisions contained in the Act, the National Park Service, in most instances, lists nominations based on the recommendation of State or Federal nominating authorities without detailed professional evaluation. However, the Keeper does perform a detailed professional evaluation of particular nominations as part of a systematic process of monitoring State and Federal historic preservation programs, and as otherwise necessary, to ensure the integrity of the National Register.

Under section 106 of the Act, Federal agencies must provide the Advisory Council on Historic Preservation an opportunity to comment on the effect of Federal, federally assisted, or federally licensed undertakings on properties which are included in or eligible for inclusion in the National Register. The Advisory Council has established procedures for compliance with section 106 in 36 CFR Part 800, Protection of Cultural and Historic Properties. The Act also requires the Secretary of the Interior to develop regulations for making determinations of eligibility of properties for inclusion in the National Register. One of the purposes of making such determinations is to assist Federal agencies in complying with section 106 of the Act. 36 CFR Part 60 describes the procedures for such determinations.

The Secretary is also authorized under the Act to develop regulations for the certification of local governments to participate in the process of nominating properties to the National Register and other Federal historic preservation

activities. The requirements for the process of certification of local governments are included in 36 CFR Part 61. The specific responsibilities of certified local governments in the process of nominating properties to the National Register are included in 36 CFR Part 60. These regulations also describe the procedures to follow for nominations of properties located in States without approved State historic preservation programs.

These regulations also provide opportunities for the public to request that nominating authorities take specific actions consistent with the procedures. Furthermore, an individual can appeal directly to the Keeper where the individual disagrees with a decision of a nominating authority, or where the individual believes that a nominating authority or the Keeper has failed to act in accordance with these regulations.

The National Park Service publishes annually in the **Federal Register** a list of properties listed in, or determined eligible for inclusion in, the National Register during the previous fiscal year (up to September 30).

Major Changes

The following is a summary of the major proposed changes from 36 CFR Parts 60 and 63 as they are currently in effect. In addition to these changes, the document reflects a considerable reorganization of existing provisions.

The rule has been reorganized to present the different phases of National Register processes each in its own section or subsection: notification, owner objection, State Review Board consideration, Certified Local Government participation, Keeper's review, removals, public requests, appeals, and requests for determinations of eligibility.

Definitions have been added, deleted, or revised as necessary. Of particular note are the following:

The definitions for Multiple Resource Format submission and Thematic Resource Format submission have been deleted. Both formats are now described as a multiple property format in § 60.6(f).

The definitions of district, site, structure, building, and object have been deleted from the definitions and are described in a new section, § 60.4, Categories of Registration.

The National Register Criteria are not included in this proposed revision to Part 60. The National Park Service is currently reviewing the criteria and related guidelines for applying the criteria to determine if revisions are necessary. If, as a result of that review, criteria changes are to be proposed, the National Park Service will publish revised criteria for comment at a later date.

Statements concerning the nominating authority's prerogative in scheduling the evaluation and nomination of properties to the National Register and the role of the Comprehensive Statewide Historic Preservation Plan have been added as § 60.7(a)(3).

The role of local governments certified by the Secretary of the Interior in the nomination process is outlined in § 60.7(b)(1) (v) and (vi) and § 60.7(e).

Under these proposed procedures, Federal agencies have the option to notify private owners and appropriate local officials when privately owned inholdings surrounded by Federal lands are included in a nomination of Federal property. Otherwise, the appropriate State Historic Preservation Officer will perform notifications to private property owners when the nomination is forwarded to the State for review. In either case, notifications to private property owners and local officials must meet all the requirements for notification in § 60.7(b).

The separate provision for concurrent State/Federal nominations, whereby both nominating authorities combine their efforts to nominate both Federal and non-Federal properties, has been deleted. Under the proposed procedures, Federal and non-Federal properties can still be combined into one nomination, and both authorities will have the opportunity to contribute to the nomination. However, only one authority will make the nomination, and, therefore, be accountable for ensuring that all procedures are complied with.

This proposed rule addresses the question of who has the authority to nominate properties on the Outer Continental Shelf outside a State's jurisdiction. For properties on the Outer Continental Shelf that are not under State jurisdiction, nominations will be made by the appropriate Federal agency. However, because of States' interest in the preservation of such properties, a provision has been added in § 60.7(b)(2)(i)(C) whereby the appropriate State Historic Preservation Officer(s) is to be notified of such a nomination by the nominating Federal agency.

Questions concerning notification for properties located on Indian lands have been addressed in this proposed rule. The State Historic Preservation Officer or Federal Preservation Officer is required to notify the chief executive officer of an Indian tribe when properties on reservation lands are considered for nomination and provide an opportunity to comment on the nomination and notify the same official again when a property is listed. In such circumstances, the chief executive officer of an Indian tribe is considered to be an Appropriate Local Official as defined in § 60.2(a). Nominating authorities are encouraged under § 60.7(b)(1)(i), but not required, to notify other interested officials, such as traditional tribal leaders, if appropriate.

These regulations include procedures for nominations by persons or local governments in States without programs approved by the Secretary under 36 CFR Part 61.

A provision has been added under § 60.7(d)(3) whereby, if the State Historic Preservation Officer disagrees with the recommendation of the State Review Board, the State Historic Preservation Officer shall notify the Board within ten days. A decision by the State Historic Preservation Officer not to nominate a property recommended by the Board can be appealed by the Board or any individual under § 60.11.

One of the requirements in section 101(a)(2)(F) of the Act is that the Secretary promulgate or revise regulations for notifying the general public when a property is being considered for inclusion in the National Register. Section 60.7(g)(1) of the proposed rule requires that the Keeper, following receipt of nominations, publish notice in the **Federal Register** that properties are being considered for listing and allow 15 days for public comment. Although this provision literally meets the requirement in the Act, the Keeper does not believe that this is necessarily the most effective or cost efficient way to notify interested parties. First, the **Federal Register** has national circulation, while the vast majority of properties nominated to the National Register are of local significance. Second, the **Federal Register** is not widely circulated among the general public. Third, it is expensive to publish notices of pending nominations in the **Federal Register**. The Keeper has considered delegating the responsibility of notifying the general public to the nominating authority so that such notices could be directed toward those individuals who would be most likely to be interested in the nominations, but the Keeper is concerned about imposing additional burdens and expenses on nominating authorities. Therefore, the Keeper invites suggestions of an alternative process that would more effectively and efficiently meet the requirement that the general public be notified of nominations.

Provision is made in § 60.7(g)(2) for the Keeper to interrupt the required 45-

day review period for nominations to consider significant new information concerning the registration of a property introduced during an appeal pursuant to § 60.11(a)(2). Such an interruption will not exceed 30 days and will not be used more than once during the review period. A similar provision has been included for the review of requests for determinations of eligibility under § 60.12(e).

Revisions to documentation are addressed in two sections. Section 60.7(h) includes provisions for revising documentation on nominations prior to listing, and § 60.8 deals with revisions to documentation on listed properties. For revisions under § 60.7(h), the Keeper does not believe that all possible situations where documentation is revised and the subsequent required actions of the nominating authority can be identified in regulations. Therefore, the nominating authority is given considerable latitude in deciding which phases of the nomination process need to be repeated and whether property owners and appropriate local officials need to be renotified when a nomination is revised depending on the nature of the revisions and how substantive they are. In doing so, nominating authorities are to act in a manner consistent with the intent of the nomination and public participation processes as outlined in these regulations.

The grounds for removal of properties from the National Register under § 60.9(a) have been reduced from four to two. Under currently effective procedures, the grounds for removal of properties from the National Register are: "(1) The property has ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing; (2) Additional information shows that the property does not meet the National Register criteria for evaluation; (3) Error in professional judgment as to whether the property meets the criteria for evaluation; or (4) prejudicial procedural error in the nomination or listing process."

Under these proposed procedures, § 60.9(a), the two grounds for removal are "(1) the property does not now meet the National Register criteria; or, (2) there has been prejudicial procedural error in the nomination or listing process." Decisions to remove under § 60.9(a)(2) result from the discovery that prejudicial procedural errors were made by the nominating authority or the Keeper during the nomination or listing process. Whether or not a property meets the criteria does not bear on the decision to remove such property from the National Register under § 60.9(a)(2). When properties that meet the National Register criteria are removed for prejudicial procedural error, they will retain their determined eligible status and may be renominated and listed in accordance with the requirements in these procedures.

A new provision has been added as § 60.9(g) to protect an owner of a property listed in the National Register where the owner has, in good faith, qualified for a Federal income tax incentive for the certified rehabilitation of that property and such property is later removed from the National Register under the grounds in § 60.9(a). This provision, combined with § 60.9(e) which enables the Keeper to determine the date that removal from the National Register takes effect, allows the Keeper to take into account the effect of the delisting on an owner's tax circumstances.

Sections 60.10 and 60.11 describe procedures for requests from the public and appeals, respectively. Requests are appropriate when someone wants a nominating authority to initiate an action provided for in these regulations. Appeals are appropriate when someone disputes a decision by a nominating authority either on professional or procedural grounds or contends that the Keeper has failed to comply with these regulations. Requests are always made to nominating authorities, while appeals are always made to the Keeper.

Requesters are encouraged to prepare and submit documentation supporting their requests. Provision of documentation and the adequacy of such documentation will be important in determining whether and how soon the nominating authority can take action on the request. Although requests may be made without submitting documentation, because of the heavy workload of most nominating authorities, and because they retain the prerogative to establish priorities for National Register activities, it will be considerably more difficult for them to comply with requests in a timely manner, particularly requests for nominations, unless the requester has prepared historic or archeological documentation in advance of making a request. Furthermore, should an appeal be filed directly with the Keeper under 60.11 following a dispute between someone and a nominating authority concerning the adequacy of the authority's response to a request, the Keeper will take into consideration whether or not documentation was provided in support of the request and the adequacy of that documentation before making a decision on the appeal.

The Keeper's decisions on appeals shall ensure that the authority of the State Review Board to review all nominations is maintained. When a nominating authority chooses to not submit a nomination to the State Review Board, and an appeal is filed and sustained, the nominating authority shall present the nomination to the Review Board before it is considered by the Keeper.

Appeals procedures for resolving questions of historic significance of properties for Federal tax benefit certification purposes are established in 36 CFR 67.10. It should be understood that, although such appeals are processed under different regulations, the consideration of such appeals employs the same standards, guidelines, and criteria used for considering appeals under 36 CFR 60.11. In practice, the procedure in § 67.10 is functionally merged with the procedure in § 60.11.

Section 60.12 describes the procedures for determining the eligibility of properties for inclusion in the National Register at the request of Federal agencies. As noted in § 60.12(a), requests for determinations of eligibility will be supported by the same level of documentation as required for nominations. Decisions on the eligibility of properties for the National Register require a certain minimum level of information and documentation, and no more should be necessary for making decisions on nominations than for determinations of eligibility. This recognizes the inherent parity in the nature of the two decisions and should not be used to increase the amount of documentation necessary for requesting determinations of eligibility. The National Park Service will be reassessing the level of documentation necessary for both determinations of eligibility and nominations. If it is determined that unnecessary documentation requirements exist in either procedure, those requirements will be reduced appropriately.

Section 60.12(f) provides that Federal agencies, with the concurrence of the State Historic Preservation Officer, can consider properties eligible for the National Register solely for purposes of complying with section 106 of the Act without seeking a formal determination of eligibility from the Keeper. These revisions are consistent with the review and comment process established by the Advisory Council 36 CFR Part 800, the regulations that implement section 106.

However, the authority for Federal agencies and States to substitute this process for a formal determination of eligibility by the Keeper can be revoked in the case of particular Federal agencies or States if they exhibit a pattern of non-conformance with the evaluation criteria and guidelines in 36 CFR Part 60 or the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. Conformance with this standard will be monitored by the National Park Service through programmatic review of States and Federal agencies. The National Park Service will ensure that processes for deciding which properties are eligible for the National Register are implemented in such a way that the Secretary's authority to determine the eligibility of properties for the National Register under section 101(a)(2)(E) of the Act is maintained.

A statement about limitations on the release of information to the public is included in § 60.13(a).

On December 12, 1980, the Act was amended. On November 16, 1981, interim regulations for §§ 60.1, 2, 3, 4, 5, 6 (except paragraphs (i) and (m)), 9, 10, 13, 14, 15 were published in the **Federal Register**, effective as of that date. Also on November 16, 1981, proposed regulations for amended §§ 60.6(m), 8, 11 and 12 of 36 CFR Part 60 were published. Subsection 60.6(m) and §§ 60.11 and 60.12 were published in final on October 12, 1983. Sections 60.6(i) and 60.7 concerning nominations within the jurisdiction of certified local governments were reserved in the November 16 publication.

Rather than making the interim rule of November 16, 1981, a final rule, the National Park Service is proposing this rule for comment. One reason for this is the consolidation of two regulations into one and, consequently, the need to integrate entirely the two processes implemented in those regulations. Also, because a considerable amount of time has passed since the 1981 publication, and a great deal of experience in the use of these procedures has been gained by all the partners in the national historic preservation program, the Service wants to take full advantage of the opportunity to improve on existing procedures by involving all users in a full review and comment process.

All provisions of Part 60, with the exception of the National Register Criteria, are included in this proposed rule. The criteria, published on November 16, 1981, under § 60.4, will be redesignated to § 60.5 under the revised procedures. All other provisions of the proposed National Register procedures can be found in § 60.1 through § 60.4 and 60.6 through 60.13.

36 CFR Part 63, Determinations of Eligibility for Inclusion in the National Register of Historic Places, have been in interim effect since September 21, 1977. The rules contained in Part 63 are hereby proposed to be incorporated into 36 CFR Part 60.

These proposed regulations have been prepared in consultation with State Historic Preservation Officers, Federal agencies, the National Trust for Historic Preservation, the Advisory Council on Historic Preservation and others with concerns about the National Register.

Classification

In accordance with Executive Order 12291, the Department of the Interior has determined that these rules are not "major". In accordance with the Regulatory Flexibility Act, the Department of the Interior has determined that these rules do not have a significant economic effect on a substantial number of small entities. Such determinations were made for both 36 CFR Part 60 and Part 63. These rules contain information collection requirements which have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.* and assigned clearance numbers 1024–0018 and 1024–0027.

Regulatory Impact Analysis

Not required for this rulemaking.

Environmental Impact Statement

This regulation does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

List of Subjects in 36 CFR Part 60

Historic preservation; Archeology.

The originator of these procedures is Stephen M. Sheffield of the Interagency Resources Division of the National Park Service (202/343–9500).

Dated: May 22, 1986.

William P. Horn,

Assistant Secretary, Fish and Wildlife and Parks.

For the reasons set out in the preamble, Part 60 of Title 36 of the *Code of Federal Regulations* is proposed to be amended, and Part 63 is proposed to be removed as set forth below.

PART 60—NATIONAL REGISTER OF HISTORIC PLACES

1. The authority citation for Part 60 continues to read as follows:

Authority: National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*, and Executive Order 11593.

§ 60.5 [Removed]

2. Section 60.5 is proposed to be removed.

§ 60.4 [Redesignated as § 60.5]

3. Section 60.4 is proposed to be redesignated as new 60.5.

4. Sections 60.1, 60.2, 60.3, 60.6, 60.9, 60.10, 60.11, 60.12, and 60.13 are proposed to be revised and new §§ 60.4, 60.7, and 60.8 are proposed to be added to read as follows:

§ 60.1 Authorization.

(a) The National Historic Preservation Act of 1966, as amended (the "Act"), authorizes the Secretary of the Interior to expand and maintain a National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture. The Act also provides for the Secretary to determine the eligibility of properties for inclusion in the National Register. The processes described in these regulations comply with the provisions of the Act and are consistent with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation*, published in the **Federal Register** on September 29, 1983, and available from the Keeper of the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. (b) The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.* and assigned clearance number *1024–0018* or, in the case of § 60.12(f)(2), number *1024–0027*. The information is being collected for the purpose of reviewing nominations to the National Register and will be used in determining which properties are eligible for listing. The obligation to respond is required to obtain a benefit.

§ 60.2 Definitions.

Appropriate local officials. Officials who are to be notified of nominations to, and listings in, the National Register and provided an opportunity to comment on the nomination. Generally this includes the chief elected official of the local municipal jurisdiction, or, if there is no municipal jurisdiction, the county or parish. At the discretion of the nominating authority, other officials may be notified. If the property is located on an Indian reservation, the chief executive officer of the Indian tribe is an appropriate local official for purposes of notification.

Certified local government. A local government that has been certified by the State Historic Preservation Officer and the Secretary pursuant to 36 CFR Part 61 to carry out the purposes of the National Historic Preservation Act.

Determination of eligibility. A decision by the Keeper of the National Register that a property meets the National Register criteria, although the property is not actually listed in the National Register of Historic Places.

Federal preservation officer. The official designated by the head of each Federal agency pursuant to section 110(c) of the National Historic Preservation Act who is responsible for coordinating that agency's activities under the Act including nominating properties under that agency's ownership or control to the National Register.

Keeper. The official with whom authority has been delegated by the Secretary of the Interior for expanding and monitoring the National Register of Historic Places, listing properties in the National Register, and determining the eligibility of properties for inclusion in the National Register.

Nominating authority. Person or organization authorized to nominate property to the National Register. Generally this will be the State Historic Preservation Officer or the Federal Preservation Officer. In States without approved State historic preservation programs, any person or local government may act as the nominating authority, unless the property is located within the jurisdiction of a local government certified by the Secretary of the Interior under 36 CFR Part 61, in which case the certified local government will substitute for the State as the nominating authority.

Owner(s): Those individuals, partnerships, corporations or public agencies holding fee simple title to property or equivalent under State law. The term owner or owners also means Indian tribes or members of Indian tribes who own beneficial title to Indian lands either held in trust by the United States or subject to a restriction against alienation imposed by the United States. Owner or owners does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests in property of any nature, except for owners of Indian lands.

Registration. The process which results in historic or archeological properties being listed in the National Register.

Secretary. The Secretary of the Interior.

State. Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

State Historic Preservation Officer. The official designated by the Governor or by State law to administer the State's historic preservation program and to perform the duties described in 36 CFR 61.4 including nominating properties to the National Register.

State Review Board. A board, council, commission, or other similar collegial body provided for in 36 CFR 61.4, the members of which are appointed by the State Historic Preservation Officer, unless otherwise provided for by State law, for the purpose of, among other things, reviewing the adequacy of National Register nominations and the eligibility of nominated properties.

§ 60.3 What registration is.

(a) Registration is the result of the joint Federal/State process for evaluating the values and characteristics of historic or archeological properties and listing them in the National Register. The National Register and the record of properties determined eligible for the National Register are authoritative guides for use by Federal, State, local and Indian tribal governments, private groups and citizens in recognizing the Nation's cultural resources to determine which properties should be considered for protection from destruction or impairment. Properties are added as they are identified, evaluated, and recognized as being significant.

(b) Listing private property in the National Register or determining a property to be eligible for the National Register does not prohibit under Federal law or regulation any action which otherwise may be taken by the property owner with respect to the property. It provides recognition of the value of historic and archeological properties individually and to the Nation; provides assistance in cultural resource planning and management; defines properties' qualifications for those Federal tax incentives directed at preserving historic and archeological properties; and facilitates historic and archeological site preservation in the Nation.

(c) A property eligible under the National Register criteria can be of national, State, or local significance. These levels of significance reflect the scale of historic association of the property. The determination of the value or importance of a property will vary depending on the context of that evaluation.

(d) The National Register is a planning tool. Federal agencies that carry out, assist, or license undertakings that affect a property listed on the National Register or eligible for inclusion in the National Register must take into account the effect of the undertaking on the eligible property, and must provide the Advisory Council on Historic Preservation a reasonable opportunity to comment pursuant to section 106 of the National Historic Preservation Act. Regulations for this purpose are outlined in 36 CFR Part 800, "Protection of Historic and Cultural Properties."

(e) The National Register is used for determining preservation needs. Analysis of the content of the National Register and the record of properties determined eligible for the National Register makes it possible to partially identify needs in areas such as preservation technology, planning, survey, identification, evaluation, registration, and training.

(f) If a property contains surface coal resources and is listed in the National Register, certain provisions of the Surface Mining Control and Reclamation Act of 1977 apply. The Department of the Interior's Office of Surface Mining and Reclamation Enforcement proposed regulations entitled, "Protecting Historic Properties from Surface Coal Mining Operations," 30 CFR Parts 731, 732, 761, 772, 773, 779, 780, 783, and 784, in the **Federal Register** on March 11, 1986 (51 FR 8466).

(g) The following provisions may apply to properties listed in the National Register:

(1) Listing a property in the National Register qualifies the property to be considered for historic preservation grants-in-aid authorized by the Act.

(2) For certain properties listed in the National Register, provisions of the Internal Revenue Code encouraging the preservation of depreciable structures (as defined by the Internal Revenue Service) through special tax treatments for rehabilitation may be applicable. Whether listing of private property in the National Register is advantageous with regard to tax consequences depends on the circumstances of each property and taxpayer. Other provisions of the Code encourage the donation of preservation easements (charitable contributions of partial interests in historic property). Interested parties should refer to 36 CFR Part 67 and the Internal Revenue Code implementing regulations.

§ 60.4 Categories of registration.

The National Register and the record of properties determined eligible for the National Register are composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture and the artifacts, records, and remains which are related to those properties. Each registered property falls primarily into one of the five categories listed in this section. Examples of each type of listing can be found in National Register Bulletin Number 15, *Guidelines for Applying the Criteria of the National Register of Historic Places* (see § 60.1(a) for address).

(a) *District.* A district possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.

(b) *Site:* A site: is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of the value of any existing structure.

(c) *Building.* A building, such as a house, barn, church, hotel, or similar construction, is created to shelter any form of human activity. "Building" may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn.

(d) *Structure.* The term "structure" is used to distinguish from buildings those constructions made usually for purposes other than creating shelter, such as dams or bridges.

(e) *Object.* An object is constructed or sculpted and has functional, aesthetic, cultural, historic or scientific value. Although it may be, by nature or design, movable, it is associated with a specific setting or environment, such as statuary in a designed landscape, or a ship.

§ 60.6 The registration of properties.

(a) Properties are listed in the National Register of Historic Places through the following actions:

(1) The creation of historic areas of the National Park System by Acts of Congress or Executive Orders;

(2) The designation of National Historic Landmarks by the Secretary of the Interior in accordance with 36 CFR Part 65;

(3) Registrations by the Keeper following nominations made in accordance with 36 CFR Part 60;

(4) Registrations by the Keeper following appeals pursuant to 36 CFR 60.11; and,

(5) Registrations by, and at the discretion of, the Keeper in accordance with 36 CFR 60.6(e)(1).

(b) Properties are determined eligible for inclusion in the National Register through the following actions:

(1) Determinations of eligibility by the Keeper upon the request of a Federal Agency or the Advisory Council on Historic Preservation for purposes of section 106 of the Act;

(2) Determinations of eligibility by the Keeper for properties that cannot be listed in the National Register because of owner objection during the nomination process;

(3) Determinations of eligibility by the Keeper for properties that cannot be listed in the National Register because prejudicial procedural errors were made during the nomination process;

(4) Determinations of eligibility by the Keeper for properties that have been considered by the Secretary for designation as National Historic Landmarks, have not qualified for such designation, but do meet National Register criteria;

(5) Determinations of eligibility by the Keeper for properties that have been considered by the Secretary for designation as National Historic Landmarks but cannot be listed in the National Register because of owner objection during the consideration process;

(6) Certifications of districts by the Secretary as substantially meeting the requirements for listing in the National Register in accordance with 36 CFR 67.9;

(7) Determinations of Eligibility by the Keeper for properties where an appeal has been filed and sustained under 36 CFR 60.11;

(8) Determinations of Eligibility by the Keeper when an agency Federal Preservation Officer does not approve a State Historic Preservation Officer's request to nominate predominantly Federal property; and,

(9) Determinations of eligibility by, and at the discretion of, the Keeper in accordance with 36 CFR 60.6(e)(1).

(c) Properties listed in, but later removed from, the National Register because of prejudicial procedural error in accordance with § 60.9(a)(2) shall retain a determined eligible status.

(d) Certifications that properties contribute to the significance of a historic district under 36 CFR Part 67 are determinations for Federal income tax purposes only and do not affect the National Register status of such properties.

(e) Who May Seek Registration.

(1)(i) All decisions concerning listings, determinations of eligibility, removals, and revisions to documentation are made by the Keeper of the National Register or his or her designee. The Keeper has the discretion to list a property in the National Register, determine a property eligible for inclusion in the National Register, and remove properties from the National Register or the list of properties determined eligible, without nomination or request by any other authority. Such action will only be taken after compliance with the applicable notification and comment provisions in these regulations. The Keeper also has the discretion to revise documentation on listed or determined eligible properties consistent with § 60.8(b) without request by any other authority.

(ii) Only the Keeper may list districts, sites, buildings, structures and objects in the National Register. Determinations of which resources within the defined boundaries of a nomination contribute to the listing and which are non-contributing are normally made by the nominating authority in accordance with the standards and guidelines established by the Keeper, unless changed by the Keeper in accordance with the procedures for revising documentation in § 60.8.

(2)(i) The Federal Preservation Officer for each Federal Agency is authorized under section 110(a)(2) of the Act to nominate properties under the agency's control.

(ii) Federal agency officials may request the Keeper of the National Register to determine whether any property is eligible for listing in the National Register as part of compliance with section 106 of the Act. Although this does not result in registration, properties which are determined eligible can be registered if the procedural and documentation requirements of these regulations are later met.

(3) The State Historic Preservation Officer is authorized under section 101(b)(3)(B) of the Act to nominate properties within the State to the National Register. The State Historic Preservation Officer establishes, as part of the Comprehensive Statewide Historic Preservation Plan, priorities for nomination of properties meeting the National Register criteria and makes nominations in accordance with those priorities. The State Historic Preservation Officer may nominate Federal property only as provided in § 60.7(b)(2)(ii).

(4)(i) Any person or local government may nominate a property if such property is located in a State without an approved State historic preservation program.

(ii) For properties located within the jurisdiction of a Certified Local Government as defined in § 60.2(b) in States without approved programs, nominations will only be made by the Certified Local Government. In such cases, the chief elected official will perform the responsibilities of the State Historic Preservation Officer under these procedures, while the local commission will perform the responsibilities of the State Review Board described in § 60.7(d). Where properties are located within the jurisdiction of a Certified Local Government in a State with an approved program, the Certified Local Government may participate in the nomination process as described in § 60.7(b)(1) (v) and (vi) and 60.7(e) but will not directly nominate properties to the Nationsl Register.

(5) Any person may request nomination pursuant to § 60.10, Public Requests, or appeal for or against nomination pursuant to § 60.11, Appeals.

(f) Formats for Registration. Each listing in the National Register fits one of the five categories: district, site, building, structure, or object. A category of property may be nominated and listed individually; or, more than one category of property may be nominated in a multiple property format provided all the included property categories bear some significant historic or cultural relationship to each other. In either case, each district, site, building, structure, and object included in the nomination will be evaluated individually against the National Register criteria. For detailed guidance on how to use these registration formats, refer to National Register Bulletin Number 16, *Guidelines for Completing National Register of Historic Places Forms* (see § 60.1(a) for address).

§ 60.7 Nominating properties to the National Register.

(a)(1) Properties are evaluated and, if considered eligible, nominated to the National Register by the nominating authorities described in § 60.6(e). Nominating authorities identify eligible properties during surveys or other historic property identification activities, or they may be brought to the attention of the nominating authority by local governments, preservation commissions or other organizations or interested individuals.

(2) All nominations and requests for determinations of eligibility are to be made on National Register of Historic Places form #NPS 10–900. To meet documentation requirements, the forms and accompanying maps and photographs must be prepared in accordance with guidance in National Register Bulletin Number 16, *Guidelines for Completing National Register of Historic Places Forms*. Forms and technical guidance are provided upon request by the Keeper (see § 60.1(a) for address) or the State Historic Preservation Officer.

(3) Except as otherwise stipulated in these regulations, nominating authorities retain sole authority in scheduling evaluation and nomination of properties to the National Register so long as the rationale for setting priorities is clearly defined and made available to the public upon request. For nominations by State Historic Preservation Officers, priorities are to be established consistent with the Comprehensive Statewide Historic Preservation Plan. Nominations by Federal Preservation Officers should be made consistent with the *Guidelines for Federal Agency Responsibilities Under Section 110 of the National Historic Preservation Act*, available from the National Park Service (see § 60.1(a) for address). Information concerning scheduling of properties for consideration and the nominating authority's priorities is to be made available to the public. Responses to public requests under § 60.10 will be in accordance with these established priorities, and the Keeper's decisions following appeals under § 60.11 will take into account these established priorities.

(b) Notification of Intent to Nominate. Owners and appropriate local officials as defined in § 60.2 (a) and (g) will be notified that a property is being considered for nomination to the National Register. For multiple property format nominations, each district, site, building, structure and object to be included must be treated as a separate nomination for the purpose of notification.

(1) Notifications for nominations of non-Federal property will be made as follows:

(i) The State Historic Preservation Officer will notify owners and appropriate local officials of the intent to nominate a property to the National Register at least 30 but not more than 75 days before the State Review Board meeting. Required notices may vary in some details of wording as the States prefer but must include certain information prescribed by the Keeper and will provide the owner(s) with information concerning the right to concur in, or object to, the nomination of the property in accordance with § 60.7(c). The notice will give the owner(s) and appropriate local officials at least 30 but not more than 75 days to submit comments and, if appropriate, objections to the nominating authority. The National Register documentation will be available for inspection by the public in the State historic preservation office during the comment period. A copy will be made available by mail when requested by the public, or made available at a location of reasonable access to affected property owners, such as a local library, courthouse, or other public place, during the comment period. Availability of nomination information will be subject to the limitations in § 60.13(a). Although appropriate local officials are those defined in § 60.2(a), the State is encouraged to notify other interested officials, such as traditional tribal leaders, if appropriate.

(ii) Property owners will be identified from the most comprehensive, reliable, and up-to-date record of ownership available, no more than 60 days prior to the notification of intent to nominate. Usually this is the official land record or tax records. Where there is more than one owner on the record, each owner will be notified.

(iii) The State Historic Preservation Officer is responsible for notifying all owners whose names appear on the record of owners consulted. For a nomination with more than 50 property owners, the State Historic Preservation Officer may instead provide general notice to property owners concerning the intent to nominate at least 30 days but not more than 75 days before the State Review Board consideration described in § 60.7(d). As with notifications to individuals, general notices will include certain information prescribed by the Keeper and will provide the owner(s) with information concerning the right to concur in, or object to, the nomination of the property in accordance with § 60.7(c). The notice will give owner(s) at least 30 but not more than 75 days to submit objections to the nominating authority. General notices will be published as a legal notice in at least one local newspaper with general circulation in the area of the nominated property.

(iv) The commenting period following notification can be waived only when all property owners and the notified local officials have advised the State Historic Preservation Officer in writing that they agree to the waiver.

(v) Before a property or district within the jurisdiction of a Certified Local Government may be nominated by the State, the State Historic Preservation Officer will notify the owner(s), appropriate local officials and applicable historic preservation commission at least 60 but not more than 120 days prior to the State Review Board consideration. The commission,

after providing a reasonable opportunity for public comment, will prepare a report as to whether or not such property or district meets the National Register criteria and transmit such report as described in § 60.7(e).

(vi) Any additional responsibilities delegated by the State to the Certified Local Government will be performed in accordance with the requirements for States in these procedures.

(2) Notifications for nominations of Federal property will be made as follows:

(i) Nominations of Federal property by the Federal Agency.

(A) The Federal Preservation Officer will notify appropriate local officials of the intent to nominate a property at least 30 but not more than 75 days before transmitting the nomination to the State Historic Preservation Officer. The notice will provide the local officials at least 30 but not more than 75 days to comment on the nomination. In cases where the Federal Agency has total control over the property, and the Agency determines in writing that the nomination will be of no consequence or concern to the local officials, the Agency, in its discretion, need not notify such officials.

(B) Completed nominations will be forwarded by the Federal Preservation Officer to the appropriate State Historic Preservation Officer in States with approved State historic preservation programs. The State is given 45 days to review and comment regarding the adequacy of the documentation, the justification of significance of the property, and its eligibility under National Register criteria. The State Historic Preservation Officer will sign the nomination form making a recommendation concerning eligibility and return the nomination to the Federal Preservation Officer by the end of the 45-day period. The recommendation of the State Historic Preservation Officer is advisory only.

(C) For properties located on the Outer Continental Shelf, Federal agencies will forward the nomination to whichever State Historic Preservation Officer(s) would be expected to have an interest in the nomination.

(D) Where the State Historic Preservation Officer does not respond within 45 days, the Federal Preservation Officer may process the nomination without the State's opinion.

(E) When a portion of the area included in a Federal nomination is located on land not under the ownership or control of the Federal agency, but is substantially encompassed by Federal land, such as inholdings, the Federal Preservation Officer will comply with the procedures for notification to owners and appropriate local officials required for nominations of non-Federal property. Otherwise, the completed nomination form will be sent to the State Historic Preservation Officer for notification of non-Federal owners in accordance with procedures in § 60.7(b)(1).

(ii) Nominations of Federal property by the State.

(A) Where Federal property is being nominated by a State Historic Preservation Officer within the limitations provided for in § 60.7(b)(2)(ii)(B) and (C), the Federal owner will be notified and afforded the same opportunities to comment as required in the notification provisions for nomination of non-Federal properties under § 60.7(b)(1).

(B) The State Historic Preservation Officer may include Federal property in a nomination when such property lies within the boundaries of a nomination of predominantly non-Federal property.

(C) In cases where a nomination is comprised of predominantly Federal property, the State Historic Preservation Officer may nominate only with the written concurrence of the appropriate agency Federal Preservation Officer. Where such concurrence is not given within a reasonable time period, the State will request a determination of eligibility for inclusion in the National Register from the Keeper.

(3) Notifications in States without approved programs will be made as follows:

(i) For nominations in States without approved programs, property owners will be identified by the person or local government making the nomination in accordance with the requirements in § 60.7(b)(1). A record of names and addresses of owners and appropriate local officials will be obtained no more than 60 days prior to forwarding the nomination to the Keeper and will be forwarded with the nomination. The Keeper will notify, in writing, owners of property and appropriate local officials at least 30 but not more than 75 days before the beginning of the required review period described in § 60.7(g)(2) and will provide opportunities to comment and, if appropriate, object to the nomination consistent with the requirements in § 60.7(b)(1).

(ii) For nominations of property within the jurisdiction of Certified Local Governments in States without approved programs, the chief elected official will perform the notification responsibilities ordinarily undertaken by the State Historic Preservation Officer under § 60.7(b)(1).

(iii) For Federal nominations in States without approved programs, the Federal Preservation Officer is not required to notify or consult with the State government.

(c) Objections by Owners of Private Property.

(1) Upon receiving notification of the intent to nominate, any owner(s) of a private property who objects to having property listed in the National Register will provide to the nominating authority a notarized statement certifying that they are either the sole or partial owner of the property and that they object to the listing. The property will not be listed (but, if eligible, will be determined eligible for listing) if the sole owner, or a majority of the partial owners of the property, objects to listing. In the case of districts, a majority of the owners of property within the district must so object to prevent listing.

(2) Upon receipt of notarized objections to a nomination of property with multiple owners, the authority performing notification will determine whether a majority of the owners of private property listed in records specified in § 60.7(b)(1)(ii) has objected. If a person or organization whose name did not appear on the list certifies in a notarized statement that they are either the sole or partial owner of a nominated private property, that owner will be included in the determination of whether a majority of owners has objected unless the authority performing notification has sufficient reason to doubt the reliability of the statement.

(3) Each owner of private property in a nomination with multiple owners who chooses to object may register only one objection no matter how many properties or what portion of one property that party owns and regardless of whether the property contributes to the significance of the nomination.

(4) For multiple property format nominations, each district, site, building, structure and object is treated separately for the purpose of determining whether a majority of owners has objected.

(5) All written comments and notarized statements of objection to listing received by the nominating authority are forwarded to the Keeper by the nominating authority with the nomination. Where a majority of owners has objected, a statement indicating so will be forwarded with the nomination.

(6) If the owner, or a majority of owners, of private property has objected to the nomination, the nominating authority will forward the nomination to the Keeper for a determination of eligibility in accordance with § 60.7(f)(6).

(7) Subdivisions, or other transactions, which result in and/or have the purpose of altering the number of owners for purposes of these owner objection provisions, may be disregarded by the nominating authority and the Keeper in considering owner objections.

(d) State Review Board Evaluation of Proposed Nominations. The State Review Board will consider all nominations by the State Historic Preservation Officer, except as described in § 60.7(d)(4).

(1) Completed nomination forms, or similar documentation on the significance and eligibility of a property for the National Register, are evaluated by the State Review Board, without regard to owner objection. The Board will consider whether or not the property meets National Register criteria and the nomination meets documentation standards, and then will recommend to the State Historic Preservation Officer whether or not the nomination should be forwarded to the Keeper.

(2) A record of the Board's opinion about each proposed nomination will be kept as a verification of the Board's consideration, any agreement or disagreement with the State Historic Preservation Officer, and in the event of an appeal under § 60.11. This record may be in the form of minutes of the Board's meeting and will be made available to the public on request.

(3) The State Historic Preservation Officer will notify the Board within 10 days if the State Historic Preservation Officer does not concur in the Board's recommendation. Where the State Historic Preservation Officer refuses to forward a nomination that the Board considers eligible, the Board may appeal directly to the Keeper under § 60.11.

(4) Properties need not be presented to the State Review Board under the following circumstances:

(i) In cases where documentation in a nomination which has already been reviewed by the State Review Board is revised prior to listing, as described in § 60.7(h), and such revisions are of a technical nature as determined by the nominating authority, such documentation need not be again presented to the Review Board.

(ii) In cases where the boundary of an already listed property must be revised because it incorrectly locates resources as described in § 60.8(c)(2), the boundary may be revised to add land area to the listing without being reviewed by the State Review Board so long as previously unevaluated resources are not included in the revision. In such cases, the decision to revise the boundary is a technical decision to more accurately reflect the actual location of already evaluated significant resources.

(iii) In cases where significance has already been evaluated as part of the nomination and listing of other related properties, and the property under consideration is being evaluated to determine if it possesses the same qualities of significance as those already listed, such property need not be presented to the Review Board.

(e) Participation in Nomination Process by Certified Local Governments.

Within 60 days of notice from the State Historic Preservation Officer as required in § 60.7(b)(1)(v), the chief local elected official will transmit the report of the commission along with the official's recommendation to the State Historic Preservation Officer. If both the commission and the chief local elected official recommend that a property not be nominated, the State Historic Preservation Officer will take no further action, unless an appeal is filed under § 60.11. If the commission and/or the chief local elected official recommend that a property be nominated or take no action, the State Historic Preservation Officer will present the nomination for review to the State Review Board in accordance with the procedures in § 60.7(d). The State may expedite this process with the concurrence of the Certified Local Government so long as public participation opportunities have been made available. Any report and recommendation made by the Certified Local Government will be included with the comment record forwarded by the State Historic Preservation Officer to the Keeper.

(f) Transmitting the Nomination to the Keeper of the National Register.

(1) Nominations recommended by the nominating authority under the National Register criteria will be transmitted to the Keeper as soon as the documentation and procedural requirements of § 60.7 have been met.

(2) When the State Historic Preservation Officer and the State Review Board disagree on whether a property meets the National Register criteria, the State Historic Preservation Officer may choose to forward the nomination to the Keeper along with both opinions concerning whether or not the property meets the criteria.

(3) The nominating authority signs the nomination form certifying that the nomination meets the documentation and procedural requirements of § 60.7.

(4) The following will be included with nominations forwarded to the Keeper:

(i) Notarized objections received from owners of private property;

(ii) Comments received by the nominating authority;

(iii) Recommendations by Certified Local Governments for nominations of property within the jurisdiction of a Certified Local Government.

(5) In States without approved programs, the following will be included with nominations forwarded to the Keeper:

(i) Notarized objections received from owners of private property;

(ii) Comments received by the nominating authority;

(iii) The name, title, mailing address and telephone number of the nominating authority;

(iv) A statement signed by the nominating authority indicating that the nomination meets the documentation and procedural requirements of § 60.7; and,

(v) The names and mailing addresses of owners of nominated property and appropriate local officials as prescribed for State nominations.

(6) Where a property cannot be listed in the National Register because of owner objection under § 60.7(c), the nominating authority will forward the documentation to the Keeper for a determination of eligibility for inclusion in the National Register.

(g) Review and Notification by the Keeper of the National Register.

(1) When a nomination is received, the Keeper will publish a notice in the **Federal Register** stating that the property is being considered for listing in the National Register of Historic Places. A 15-day commenting period from date of publication will be provided. When necessary to assist in the preservation of historic properties, and at the discretion of the Keeper, this 15-day period may be reduced.

(2) Nominations of properties meeting the National Register criteria, meeting the documentation and procedural requirements of § 60.7, and where owner objection does not prevent listing, will be listed in the National Register within 45 days of receipt of completed documentation or, in the case of a nomination of property in a State without an approved program, within 45 days of the close of the commenting period that follows notification by the Keeper. Nominations which do not meet the requirements in § 60.7 or the National Register criteria will be returned to the nominating authority with an explanation. The Keeper may interrupt the 45-day review period if necessary in order to consider significant new information concerning the registration of a property introduced during an appeal pursuant to

§ 60.11(a)(2). Such an interruption will not be for a period exceeding 30 days and will not be used more than once during the review period for a nomination.

(3) Nominations will receive detailed evaluation by the National Park Service at the Keeper's discretion. Ordinarily, samples of nominations will be selected for such detailed evaluation to monitor the quality of documentation and assess nominating authorities' recommendations concerning eligibility. The frequency of this detailed evaluation for each State's nominations will be determined based on the results of assessments of the quality of the State's planning, personnel, policy, programming, and procedures. Such assessments are part of the State program approval process outlined in 36 CFR Part 61. However, all nominations are reviewed to ensure that essential administrative and technical information has been provided.

(4) The Keeper will inform the nominating authority that a property has been listed in the National Register. Nominating authorities will inform owners and appropriate local officials when properties are listed in the National Register. In the case of the nomination of property with more than 50 owners, owners may be notified of the listing by a general notice. In States without approved programs, the Keeper will notify owner(s) and appropriate local officials when properties are listed.

(5) Nominations accompanied by incomplete documentation will be returned to the nominating authority with an explanation of the specific deficiencies. If the specified deficiencies are corrected, and the nomination is transmitted to the Keeper, the Keeper will process the nomination in accordance with the requirements and time frames in this Section. Nominations returned by the Keeper and renominated will be considered to be revised nominations and will be processed as described in subsection (ii).

(6)(i) The Keeper will make a determination of eligibility for a nomination of property that cannot be listed in the National Register because of owner objection within 45 days of receipt or, in the case of nominations of properties in States without approved programs, within 45 days of the close of comment periods following notification by the Keeper. The Keeper will notify the nominating authority and the Advisory Council on Historic Preservation that such property has been determined eligible.

(ii) The State Historic Preservation Officer will notify the owner(s) and the appropriate local officials of such determination in the same manner as notification after listing.

(iii) In the case of nominations by persons or local governments where owner(s) have objected, the Keeper will notify the appropriate local officials and the owner(s) that a determination of eligibility has been made.

(7) The Keeper will list in the National Register properties determined eligible where owners have objected upon receipt of notice that the owners no longer object to listing and after the 15-day comment period following notification in the **Federal Register** has expired. An owner's notarized statement withdrawing objections to listing should be sent to the nominating authority and subsequently transmitted by the nominating authority to the Keeper with a request that the nominated property be listed. Properties determined eligible under § 160.7(g)(7) will retain that status unless the owner withdraws the objection.

(h) Revision of a Nomination Prior to Registration.

(1) If subsequent to nomination, but prior to listing, a nominating authority proposes substantive revisions to a nomination, the nominating authority will ensure that all provisions relative to notification and comment and State Review Board evaluation are met prior to forwarding documentation on such revisions to the Keeper.

(2) Properties renominated within one year of the date of the return of the original nomination need not be reprocessed in accordance with State Review Board and other notification requirements in § 60.7 so long as property has not been added to or deleted from the nomination, substantive changes that merit such reconsideration and notifications have not been made, and the nominating authority ascertains that ownership of the property has not changed since the initial notification. Properties renominated after one year from the date of return must be reprocessed in accord with all the requirements in § 60.7 regardless of the nature of the revisions to the original documentation.

§ 60.8 Revising documentation after registration.

(a) Revising Documentation when Registered Properties are Moved. Properties which are moved will be deleted from the National Register effective the date of the move unless the Keeper has agreed prior to the move that the qualities for which the property was registered will remain unaffected by the relocation. When a property is moved, every effort should be made to reestablish its historic orientation, immediate setting, and general environment.

(1) If a property on the National Register is to be moved, the nominating authority will provide the Keeper with revised National Register documentation including the following:

(i) A description of the method to be used for moving the resource;

(ii) An evaluation of the effect of the move and new setting on the property's historic integrity;

(iii) A description of the new setting and general environment including evidence that the new site itself does not possess historic or archeological significance that has been or will be adversely affected by the intrusion of the property;

(iv) Photographs showing the new location; and,

(v) A description of the proposed boundary.

(2) Any such proposal with respect to a new location will follow the procedures for notification and comment required for nominations under § 60.7. The Keeper will respond to a properly documented transmittal concerning whether or not the property will remain in the National Register within 45 days of receipt from the nominating authority, or, where there is no approved State program, within 45 days of the close of the comment period following notification by the Keeper.

(3) If the Keeper determines that the move will not result in the loss of the characteristics that make the property eligible for the National Register, and those characteristics are not lost during the move in some unforeseen manner, the property will remain in the National Register following the move. The nominating authority will, immediately following the move, forward to the Keeper documentation revising the National Register property file to reflect all changes necessary as a result of the move. Such documentation will include:

(i) The date the property was moved;

(ii) Photographs of the property on its new site;

(iii) Revised maps, including a U.S. Geological Survey (USGS) map;

(iv) Acreage information;

(v) A narrative boundary description;

(vi) New Universal Transverse Mercator (UTM) geographic location references; and,

(vii) A revised description of the property, if appropriate.

(4) If the Keeper determines that the move will result in the loss of the characteristics that make the property eligible for the National Register, or those characteristics are lost during the move in some unforeseen manner, the

property will be deleted from the National Register effective the date of the move. In any case, properties moved and deleted from the National Register will only be considered for registration if renominated in accordance with the procedures in § 60.7. Documentation for such a nomination will include information detailed in § 60.8(a)(1) and (3).

(b) Revising Documentation on the Significance of Registered Properties.

(1) If a nominating authority seeks to revise documentation concerning the significance of properties in a manner that does not alter boundaries, the nominating authority will forward signed continuation sheets to the Keeper for review and, if appropriate, addition to the nomination file, but need not notify owners or local officials. Where such consideration involves non-Federal property, the State Historic Preservation Officer will present the revisions to the State Review Board before forwarding a recommendation to the Keeper.

(2) Decisions on the historic significance of properties within National Register districts made during reviews for Federal tax benefit certification purposes under 36 CFR Part 67 shall be consistent with the documentation already on file in the National Register. If the findings of such reviews conflict with information in previously approved National Register nomination documentation, requests to revise existing documentation shall be processed in accordance with the procedures for revising documentation in these regulations. Decisions concerning revisions can only be made by the Keeper in accordance with these procedures.

(c) Boundary revisions. (1) A boundary change that would add property to the National Register will be considered as a new property nomination. The nomination of the property proposed to be added will be processed in accordance with the requirements in § 60.7, except as described in § 60.8(c)(2). Property being added will be evaluated in the context of the associated properties already registered. Only those owners in the area of the proposed addition need be notified and will be counted in determining whether a majority of private owners object to listing.

(2) In cases where the boundary of an already listed property requires revision to locate significant resources, the boundary may be revised to add land area to the listing without being reviewed by the State Review Board so long as previously unevaluated resources are not included in the revision. In such cases, the decision to revise the boundary is a technical decision to more accurately reflect the actual location of already evaluated significant resources. In all cases where land area is proposed to be added to the National Register, owners and appropriate local officials must be notified in accordance with all the requirements in § 60.7(b).

(3) A boundary change which reduces the area of a registered property will be processed in accordance with § 60.9, concerning removing properties from the National Register.

§ 60.9 Removing properties from the National Register.

(a) Properties may be removed from the National Register by the Keeper on the following grounds:

(1) The property does not now meet the National Register criteria; or,

(2) There was prejudicial procedural error in the nomination or listing process.

(b) Because properties listed in the National Register prior to December 13, 1980 were affirmed by Congress in the National Historic Preservation Act Amendments of 1980, they may not be removed from the National Register by the Keeper on the grounds established in subsection (a)(2) of this section, and may only be removed on the grounds of subsection (a)(1) if changes to a property causing it to no longer meet National Register criteria occurred after the date it was nominated to the National Register.

(c) Prejudicial procedural errors for which a property may be removed from the National Register under the grounds in (a)(2) of this section are those errors which would affect the outcome of the nomination and listing process. Properties removed from the National Register because of prejudicial procedural error in the nomination or listing process will be reconsidered for registration after the nominating authority, or the Keeper, as appropriate, corrects the error. Renomination of such properties will be in accordance with § 60.7. Any property or district removed from the National Register for prejudicial procedural error that is otherwise eligible will be determined eligible for the National Register.

(d) Nominating authorities are required to notify the Keeper when they become aware of any properties in their area of jurisdiction that meet the grounds for removal in subsection (a).

(e) Where a property is removed from the National Register, the Keeper will determine the appropriate effective date of such removal.

(f) Properties moved and subsequently deleted from the National Register will only be considered for registration if renominated in accordance with the procedures in § 60.7. Documentation for such a nomination will include information detailed in § 60.8(a) (1) and (3).

(g) If information showing that a property does not meet the National Register criteria comes to light during a later review of documentation, such as an evaluation for a certification of significance or rehabilitation under 36 CFR Part 67 or during an audit or review of nominations during the State program approval process under 36 CFR 61.4, and the owner has made a good faith effort to comply with all applicable Federal requirements, the Keeper will remove the property from the National Register, but provision shall be made, when possible, to ensure that the owner of the property is not adversely affected by such removal.

(h) When the nominating authority recommends removal of a property from the National Register under the grounds in (a)(1), the nominating authority will notify the owner(s) and the appropriate local officials and provide them at least 30 days but not more than 75 days to comment, unless there is no question about eligibility because the property has been totally destroyed. Where a removal is being recommended by a State Historic Preservation Officer, that official will schedule the proposal for consideration by the State Review Board, except where there is no question about eligibility because the property has been totally destroyed. Recommendations for removal will be forwarded by the nominating authority to the Keeper.

(i) The Keeper will make a decision concerning the removal recommendation within 45 days of completion of all notification requirements and receipt of documentation. Upon removal, the Keeper will notify the nominating authority, and the nominating authority will notify the owner(s) and appropriate officials. In cases where the recommendation for removal has come from someone other than the State or Federal nominating authority, the Keeper will perform a detailed evaluation of the documentation.

(j) Persons or local governments recommending the removal of property, where there is no approved State historic preservation program, will include a list of the owner(s) and appropriate local officials and will forward documentation directly to the Keeper. In such cases, the Keeper will notify the owner(s) and the appropriate local officials, and provide them at least

30 days but not more than 75 days to comment, unless there is no question about eligibility because the property has been totally destroyed. Upon removal, the Keeper will notify owner(s) and appropriate local officials.

§ 60.10 Public requests for action.

(a) Any person may request in writing that a nominating authority:

(1) Nominate a property to the National Register;

(2) Recommend the removal of a property from the National Register; or

(3) Recommend revising documentation on properties listed in the National Register.

(b) Requests will set forth the reasons the action should be taken on the grounds in these regulations. Requests may be accompanied by documentation, such as completed nomination forms.

(c) The nominating authority will reply to the requestor in writing within 45 days of receipt of a request. Whether or not documentation has been submitted and the level and adequacy of such documentation will be considered by the nominating authority in responding to the request. If the request is denied, it need not be processed further, unless an appeal is filed and sustained.

(d) When a request is complied with, the nominating authority will notify the requestor of final action by the Keeper.

§ 60.11 Appeals to the keeper.

(a) Any person may appeal directly to the Keeper for any of the following reasons:

(1) When the appellant disputes a decision of a nominating authority about:

(i) Nominating a property to the National Register;

(ii) Recommending the removal of a property from the National Register; or

(iii) Revising documentation on properties listed in the National Register.

(2) Where the appellant believes that it is necessary for the Keeper to perform a detailed evaluation of a nomination during review.

(3) Where the State Historic Preservation Officer will not nominate a property because both the local commission and the chief local elected official in a Certified Local Government have recommended that the property not be nominated.

(4) Where the appellant believes that the Keeper or a nominating authority has failed to act in accordance with these procedures.

(b) Appeals must include:

(1) A statement of the reasons for the appeal; and

(2) Documentation, correspondence, and any other materials explaining the facts of the case.

(c) The Keeper will review the appeal and respond to the appellant with a written explanation either denying or sustaining the appeal within 45 days of receipt of all documentation necessary to make an informed decision on the appeal. Such 45-day period will not begin until the Keeper has obtained the nominating authority's opinion if needed. If the appeal is sustained, the Keeper will take, or request the nominating authority to take, appropriate action to comply with the requirements of this regulation. In responding to appeals, taking action, and suggesting that the State Historic Preservation Officer take action, the Keeper will take into account a State's priorities as established in the Comprehensive Statewide Historic Preservation Plan.

(d) If the Keeper is notified that the appeal itself might cause an undue delay in a project, or otherwise present a hardship, the Keeper may expedite consideration of the appeal so long as public participation opportunities have been made available.

(e) Nominating authorities will act in accordance with the keeper's requests pursuant to this section in order to maintain continued approved status under 36 CFR 61.4 for State programs and under 110(c) of the Act for Federal Preservation Officers.

(f) Although appeals concerning the historic significance of properties for Federal tax benefit certification purposes described in 36 CFR 67.10 are processed under separate regulations, such appeals are considered under substantially the same standards, guidelines, and criteria used for considering appeals under 36 CFR 60.11. The Keeper may delegate the authority to make revisions to documentation on listed properties to the Chief Appeals Officer whose responsibilities are described in 36 CFR 67.10.

(g) Properties shall be reviewed for a determination of their eligibility for inclusion in the National Register following an appeal if such properties cannot be listed.

(h) The decision of the Keeper is the final administrative decision on appeals.

§ 60.12 Federal agency requests for determination of eligibility.

(a) Federal Agency requests to the Keeper for a determination of eligibility for inclusion of a property in the National Register will include the same level of documentation as required for nominations under § 60.7(a). The request will also include the opinion of the State Historic Preservation Officer, if available.

(b) Categories of properties and formats for such requests are the same as those described for nominations in §§60.4 and 60.6(f).

(c) Following a request by a Federal Agency, the Keeper will determine whether a property is eligible for inclusion in the National Register within 45 days of receipt of adequate documentation upon which to base such a determination. Adequate documentation shall include the opinion of the State Historic Preservation Officer, except where the Federal Agency has notified the State and given the State at least 30 days to provide an opinion, and such an opinion has not been provided.

(d) If the Federal Agency's request is accompanied by a level or quality of documentation upon which the Keeper cannot base a determination of eligibility, the request will be returned to the agency with an explanation of the specific deficiencies. If the specified deficiencies are corrected, a determination of eligibility will be made within 45 days of receipt of the corrected documentation.

(e) The Keeper may interrupt the 45-day review period following receipt of adequate documentation in order to consider significant, newly introduced information concerning the determination of eligibility of a property, but only when the Keeper concludes that such information could change the determination of eligibility. Such an extension will not be for a period exceeding 30 days and will not be used more than once during the review period.

(f)(1) Subject to paragraph (3) of this subsection, property may be treated as if it is eligible for the National Register solely for purposes of Federal Agency compliance with the requirements in section 106 of the Act without a formal determination by the Keeper if both the Federal Agency Official and the appropriate State Historic Preservation Officer mutually concur in such a decision, and if the decision is consistent with evaluation criteria and guidelines in these regulations and the Secretary's Standards. Federal agencies will be asked from time to time to provide the Keeper with the information and documentation meeting the Secretary's Standards used to support such decisions.

(2) Annually, each State Historic Preservation Officer will provide the Keeper with the following information on properties that have been considered eligible by a Federal Agency Official

and the State Historic Preservation Officer since the last report of such data:

(i) The name and address of the property, including county;

(ii) Acreage information;

(iii) A narrative boundary description;

(iv) Universal Transverse Mercator (UTM) geographic location references;

(v) The class of property (site, building, object, district, or structure);

(vi) The Federal Agency and State Historic Preservation Officer considering the property to be eligible; and,

(vii) The effective date of the concurrence decision.

(3) The authorization to Federal agencies and State Historic Preservation Officers to make such considerations without formal review by the Keeper will be revoked for particular States and Federal agencies if they exhibit a pattern of non-conformance with the evaluation criteria and guidelines in these regulations or the Secretary's Standards. The Keeper will monitor State performance through the State program review process under 36 CFR Part 61 and Federal Agency performance through random reviews of documentation provided by the agencies under § 60.12(f)(1). When such authority is revoked, the Keeper will notify in writing the Advisory Council and the particular Federal Agency Official or State Historic Preservation Officer of the effective date.

(g) The Keeper will review previous determinations of eligibility or ineligibility as necessary, and may modify such determinations should evidence be presented showing conclusively that the previous determination was in error or that changed conditions warrant such modification.

§ 60.13 Miscellaneous provisions.

(a) *Release of information to public.* Neither the Keeper nor the nominating authority shall disclose to the public information relating to the location or character of historic or archeological properties when the Keeper or the nominating authority determines that the disclosure of such information may create a substantial risk of harm, theft, or destruction to such properties or to the area or place where such properties are located.

(b) *Administrative process.* Administrative remedies respecting registrations, removals, or revisions to documentation will not be considered to have been exhausted until there has been compliance with these regulations, including an appeal to the Keeper pursuant to § 60.11 where permitted. In order to exhaust administrative remedies, a person seeking removal of a property from the National Register must request such a removal and appeal to the Keeper pursuant to § 60.11 even where the listing of the property was appealed in the nomination process.

§§ 60.14 and 60.15 [Removed]

5. Sections 60.14 and 60.15 are proposed to be removed.

PART 63—DETERMINATIONS OF ELIGIBILITY FOR INCLUSION IN THE NATIONAL REGISTER OF HISTORIC PLACES—[REMOVED]

6. Part 63 is proposed to be removed.

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federal register

Tuesday
August 5, 1986

Part V

The President

Helsinki Human Rights Day, Proclamation 5515

Federal Register
Vol. 51, No. 150
Tuesday, August 5, 1986

Presidential Documents

Title 3—

The President

Proclamation 5515 of August 1, 1986

Helsinki Human Rights Day, 1986

By the President of the United States of America

A Proclamation

August 1, 1986, marks the eleventh anniversary of the signing of the Final Act of the Conference on Security and Cooperation in Europe, known as the Helsinki Accords. Later this year, representatives from the signatory states will be meeting in Vienna to review implementation of these Accords, including the human rights and humanitarian provisions.

Human rights and fundamental freedoms lie at the heart of the commitments made in the Helsinki Accords of 1975 and in the follow-on Madrid Concluding Document of 1983. These documents set forth clearly a code of conduct, not only for relations among sovereign states, but also for relations between governments and their citizens. This code holds out a beacon of hope for those people in Eastern Europe and the Soviet Union who seek a freer, more just, and more secure life. We and the other Atlantic democracies will not let up in our efforts to see to it that these solemn commitments are fully honored throughout Europe.

We Americans will never waver in our commitment to implement fully the human rights and humanitarian provisions of the Helsinki Accords, not only because these freedoms are fundamental to our way of life but because of our conviction they are the God-given entitlement of every member of the human family. Let us pledge ourselves once again to do all in our power so that all people may enjoy them in peace. We also call on all 35 CSCE signatory governments to uphold these just and fundamental principles.

The Congress, by Senate Joint Resolution 371, has designated August 1, 1986, as "Helsinki Human Rights Day" and authorized and requested the President to issue a proclamation reasserting our commitment to the Helsinki Accords.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim August 1, 1986, as Helsinki Human Rights Day and call upon all Americans to observe this day with appropriate observances that reflect our continuing dedication to full implementation of the human rights and fundamental freedoms set forth in the Helsinki Accords.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of August, 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 eleventh.

Ronald Reagan

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H.J. Res. 672/Pub. L. 99–366

To ratify the February 1, 1986, sequestration order of the President for Fiscal Year 1986 issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. (July 31, 1986; 100 Stat. 773; 1 page) Price: $1.00

S. 1068/Pub. L. 99–367

OCS Paperwork and Reporting Act. (July 31, 1986; 100 Stat. 774; 1 page) Price: $1.00