AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

8-15-86
Vol. 51 No. 158
Pages 29201-29442

Federal Register

Friday
August 15, 1986

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

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: September 25; at 9 am.

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

RESERVATIONS: Doris Tucker 202-523-3419

Contents

Federal Register

Vol. 51, No. 158

Friday, August 15, 1986

Agricultural Marketing Service
RULES
Cherries grown in Washington, 29209
Honey research, promotion, and consumer information order
Correction, 29210
Oranges grown (Valencia) grown in Arizona and California, 29208
PROPOSED RULES
Dates (domestic) produced or packed in California, 29251
Milk marketing orders:
Georgia et al., 29252

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Federal Grain Inspection Service; Food and Nutrition Service; Forest Service; Soil Conservation Service
RULES
Organization, functions, and authority delegations:
Under Secretary for International Affairs and Commodity Programs et al., 29201
NOTICES
Biotechnology research; proposed guidelines, 29402

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Horses from countries affected with CEM—Norway, 29210
PROPOSED RULES
Plant pests:
Genetically engineered organisms or products, 29401

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Iowa et al., 29291

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration

Committee for Purchase from the Blind and Other Severly Handicapped
NOTICES
Procurement list, 1986:
Additions and deletions, 29296

Conservation and Renewable Energy Office
NOTICES
Consumer products, energy conservation program:
Heat pumps, New York minimum efficiency standard; preemption petition, 29304

Customs Service
NOTICES
Trade name recordation applications:
Baltimore Luggage Co., 29358

Defense Department
RULES
Federal Acquisition Regulation (FAR):
Ammunition and explosives contracts; safety precautions
Correction, 29231

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Arenol Chemical Corp., 29334
(2 documents)
Clausing, Vernon D., D.O., 29334
Frank, Patrick J., M.D., 29334
Jones, John Johnston, Jr., M.D., 29335
Lannett Co., 29335
Pangilinan, Lorimer, M.D., 29335
Sigma Chemical Co., 29336

Education Department
RULES
Postsecondary education:
Graduate academic facilities program, 29434
Student assistance; application information verification, 29396

Employment and Training Administration
NOTICES
Adjustment assistance:
Eaton Corp., 29344
Federal-State unemployment compensation program:
Unemployment insurance program letters—Requests for repayable Title XII advances, 29345
Job Training Partnership Act:
Indian and Native American employment and training programs; final designation procedures, 29339
Labor surplus area classifications:
Annual list additions, 29344

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 29348

Energy Department
See also Conservation and Renewable Energy Office; Federal Energy Regulatory Commission; Western Area Power Administration
NOTICES
Atomic energy agreements; subsequent arrangements:
European Atomic Energy Community and Sweden, 29297

Environmental Protection Agency
RULES
Air quality implementation plans; delayed compliance orders:
Pennsylvania, 29216
Hazardous waste:
Identification and listing—
Exclusions, 29217–29219
(2 documents)

Storage and treatment tank systems
Correction, 29430
PROPOSED RULES
Air quality planning purposes; designation of areas:
Pennsylvania, 29268
Water pollution control:
Citizen suits; prior notice requirements, 29426
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 29305
Weekly receipts, 29307
Ocean dredged material disposal site, Pascagoula, MS, 29306

Family Assistance Office
RULES
Aid to families with dependent children and child support enforcement programs; supplemental payment computation, 29223

Federal Aviation Administration
RULES
Airworthiness directives:
Allison, 29211
Boeing, 29212, 29213
(2 documents)
PROPOSED RULES
Airworthiness directives:
Airbus Industrie, 29256
Boeing, 29256
Cessna, 29258
Pilatus Britten-Norman Ltd., 29259
Control areas, 29261, 29262
(2 documents)
VOR Federal airways, 29263
NOTICES
Meetings:
Aeronautics Radio Technical Commission, 29358

Federal Communications Commission
RULES
Common carrier services:
Customer premises equipment, nonstructural safeguards, 29230
PROPOSED RULES
Radio broadcasting:
FM commercial stations; allocation rules; technical requirements review, 29273
Radio services, special:
Private land mobile services—
Direct access paging on frequencies in bands below 900 MHz (interconnection with public switched telephone network), 29273
NOTICES
Applications, hearings, determinations, etc.:
62 Broadcasting, Inc., et al., 29308
Haughton Television et al., 29307
Radio Kerrville, 29308
Schwier, Priscilla L., et al., 29308

Federal Crop Insurance Corporation
RULES
Administrative regulations:
Food Security Act of 1985, implementation; denial of benefits, 29202
Crop insurance regulations:
Interest rate charge, annual premium, 29204
Crop insurance; various commodities:
Barley, corn, cotton, etc., 29207
Peaches, apples, Arizona-California citrus, etc., 29205
PROPOSED RULES
Crop insurance; various commodities:
Grapes, 29246

Federal Emergency Management Agency
RULES
Claims; quarterly reports, 29222

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Arizona Public Service Co. et al., 29300
Natural gas certificate filings:
Great Lakes Gas Transmission Co. et al., 29297
Preliminary permits surrender:
Madera-Chowchilla Power Authority, 29298
Southern Star Hydro Ltd., 29298
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 29301
Exxon Corp. et al., 29298
Granite State Gas Transmission, Inc., 29302
Iowa Electric Light & Power Co., 29299
Natural Gas Pipeline Co. of America, 29299
Northwest Pipeline Corp., 29300
Ozark Gas Transmission System, 29303
Texas Eastern Transmission Corp., 29303
Transcontinental Gas Pipe Line Corp., 29300

Federal Grain Inspection Service
NOTICES
Agency designation actions:
Florida, 29291

Federal Maritime Commission
NOTICES
Meetings; Sunshine Act, 29360
Shipping Act of 1984:
Ports and marine terminal operators, survey, 29309

Federal Reserve System
PROPOSED RULES
Truth in lending (Regulation Z):
Right of rescission
Correction, 29256
NOTICES
Meetings; Sunshine Act, 29360
Applications, hearings, determinations, etc.:
Community Bank System, Inc., et al., 29309
Hebron Bancshares, Inc., et al., 29309

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
Buckingham Productions, Inc., et al., 29265

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Southern sea otters, 29362
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 29274
NOTICES
Environmental statements; availability, etc.:
Southern sea otters; translocation and experimental population establishment, 29384

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Levamisole hydrochloride gel, 29215

Food and Nutrition Service
PROPOSED RULES
Food distribution program:
Surplus commodities; national inventory system, 29236

Forest Service
NOTICES
Environmental statements; availability, etc. and land and resource management plans:
Los Padres National Forest, CA, 29291

Health and Human Services Department
See also Family Assistance Office; Food and Drug Administration; Health Care Financing Administration; National Institutes of Health
NOTICES
Agency information collection activities under OMB review, 29310

Health Care Financing Administration
RULES
Medicare:
Hospital inpatient prospective payment system; periodic interim payments elimination, 29386
NOTICES
Medicare:
End-stage renal disease program; composite rates and methodology determination, 29404
Lowest charge levels, 29310
Physician services—
Anesthesia services; reasonable charge payment limits, 29316
Cataract extractions with intraocular lens implants; reasonable charge payment limits, 29321

Housing and Urban Development Department
NOTICES
Agency information collection activities under OMB review, 29325
Grants; availability, etc.:
Fair housing assistance program, 29327

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Format of Federal Register notices, 29292
Countervailing duties:
Carbon steel wire rod from—
Zimbabwe, 29292
Leather wearing apparel from—
Mexico; correction, 29295
Export privileges, actions affecting:
McVey, Charles J., Jr., et al., 29295

Interstate Commerce Commission
NOTICES
Motor carriers; control, purchase, and tariff filing exemptions, etc.:
Greyhound Corp., 29332
Railroad operation, acquisition, construction, etc.:
Chicago, West Pullman & Southern Railroad Co., 29332
Railroad services abandonment:
Baltimore & Ohio Railroad Co. et al., 29332

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Reclamation Bureau

Justice Department
See Drug Enforcement Administration

Labor Department
See also Employment and Training Administration; Employment Standards Administration; Occupational Safety and Health Administration
NOTICES
Meetings:
Economic Adjustment and Worker Dislocation Task Force, 29337
Trade Negotiations and Trade Policy Labor Advisory Committee, 29337
Unemployment compensation, State laws; hearings:
Washington, 29337

Land Management Bureau
NOTICES
Meetings:
Salt Lake District Grazing Advisory Board, 29329

Maritime Administration
NOTICES
Trustees; applicants approved, disapproved, etc.:
Colonial Bank, 29358

Minerals Management Service
NOTICES
Outer Continental Shelf; development operations coordination:
Exxon Co., U.S.A., 29329

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 29349

National Institutes of Health
NOTICES
Recombinant DNA molecules research:
Actions under guidelines
Proposed, 29422

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Ocean salmon off coasts of Washington, Oregon, and California, 29234

Nuclear Regulatory Commission
RULES
Policy statements; obsolete or superseded by subsequent agency action; revocation; correction, 29211
NOTICES
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 29350

Occupational Safety and Health Administration
NOTICES
Meetings:
Occupational Safety and Health Federal Advisory Council, 29349

Pension Benefit Guaranty Corporation
RULES
Multiemployer plans:
Valuation of plan benefits and plan assets following mass withdrawal
Interest rates, 29215

Reclamation Bureau
NOTICES
Power marketing plans:
Lewiston Dam Powerplant, Trinity River Division, 29330

Science and Technology Policy Office
NOTICES
Biotechnology regulation, coordinated framework, 29400

Securities and Exchange Commission
NOTICES
Applications, hearings, determinations, etc.:
Korea Fund, Inc., 29350
Merrill Lynch KECALP Growth Investments Ltd. Partnership, 29352
Ohio National Life Assurance Corp. et al., 29354
Prudential Insurance Co. of America et al., 29356

Soil Conservation Service
RULES
Relocation assistance; CFR Part removed, 29208
PROPOSED RULES
Support activities:
Archeological and historical properties; protection procedures, 29251

Transportation Department
See also Federal Aviation Administration; Maritime Administration
RULES
Organization, functions, and authority delegations:
Administrators, Operating Administrations et al., 29233
Assistant Secretary for Administration, 29231
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 29357
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 29357

Treasury Department
See Customs Service

Veterans Administration
NOTICES
Environmental statements; availability, etc.:
Clinton, OK, 29358
Wilkes-Barre, PA, 29359

Western Area Power Administration
NOTICES
Power marketing plans, etc.:
Lewiston Dam Powerplant, Trinity River Division, 29330
Pick-Sloan Missouri Basin Program-Western Division and Fryingpan-Arkansas Project, 29305

Separate Parts In This Issue

Part II
Department of the Interior, Fish and Wildlife Service, 29362

Part III
Department of Health and Human Services, Health Care Financing Administration, 29386

Part IV
Department of Education, 29396

Part V
Office of Science and Technology Policy; Department of Agriculture, Animal and Plant Health Inspection Service; Department of Agriculture, 29400

Part VI
Department of Health and Human Services, Health Care Financing Administration, 29404

Part VII
Department of Health and Human Services, National Institutes of Health, 29422

Part VIII
Environmental Protection Agency, 29426

Part IX
Environmental Protection Agency, 29430

Part X
Department of Education, 29434

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
2 29201
400 29202
402 29204
403 (2 documents) 29204, 29205
405 29205
409 (2 documents) 29204, 29205
410 29204
411 (2 documents) 29204, 29205
413 (2 documents) 29204, 29205
414 29204
415 (2 documents) 29204, 29205
416 (2 documents) 29204, 29205
417 (2 documents) 29204, 29205
418 (3 documents) 29204–29207
419 (3 documents) 29204–29207
420 (3 documents) 29204–29207
421 (3 documents) 29204–29207
422 (2 documents) 29204, 29205
423 (2 documents) 29204, 29205
424 (3 documents) 29204–29207
425 (2 documents) 29204, 29205
426 29204
427 (3 documents) 29204–29207
428 (2 documents) 29204, 29205
429 (2 documents) 29204, 29205
430 (2 documents) 29204, 29205
431 (2 documents) 29204, 29205
432 (3 documents) 29204–29207
433 (2 documents) 29204, 29205
435 (2 documents) 29204, 29205
436 (2 documents) 29204, 29205
437 (2 documents) 29204, 29205
438 (2 documents) 29204, 29205
439 (2 documents) 29204, 29205
440 29204
441 29204
442 29204
443 29204
444 29204
445 29204
446 (2 documents) 29204, 29205
447 (2 documents) 29204, 29205
448 (3 documents) 29204–29207
449 29204
450 (2 documents) 29204, 29205
451 (2 documents) 29204, 29205
652 29208
908 29208
923 29209
1240 29210

Proposed Rules:
235 29236
250 29236
252 29236
255 29236
330 29401
340 29401
441 29246
656 29251
987 29251
1007 29252
1011 29252
1046 29252
1093 29252
1094 29252
1096 29252
1098 29252

9 CFR
92 29210

10 CFR
Ch. I 29211

12 CFR

Proposed Rules:
226 29256

14 CFR
39 (3 documents) 29211–29213

Proposed Rules:
39 (4 documents) 29256, 29259
71 (3 documents) 29261–29263

16 CFR

Proposed Rules:
13 29265

21 CFR
520 29215

29 CFR
2676 29215

34 CFR
617 29434
619 29434
668 29396

40 CFR
65 29216
260 29430
261 (3 documents) 29217, 29219, 29430
262 29430
264 29430
265 29430
270 29430
271 29430

Proposed Rules:
81 29268
135 29426

42 CFR
405 29386

44 CFR
11 29222

45 CFR
232 29223
233 29223

47 CFR
64 29230

Proposed Rules:
73 29273
90 29273

48 CFR
223 29231
228 29231
242 29231
252 29231

49 CFR
1 (2 documents) 29231, 29233

50 CFR
661 29234

Proposed Rules:
17 29362
20 29274

Rules and Regulations

Federal Register
Vol. 51, No. 158
Friday, August 15, 1986

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegation of Authority

AGENCY: Department of Agriculture.
ACTION: Final rule.

SUMMARY: This document amends the delegations of authority by the Secretary of Agriculture and General Officers of the Department to delegate to the Under Secretary for International Affairs and Commodity Programs and the Office of International Cooperation and Development (OICD) authority to enter into contracts, grants, cooperative agreements and cost reimbursable agreements relating to the conduct of international research, extension, or teaching activities; and authority to determine amounts for reimbursement of indirect costs under international agricultural programs and agreements.

EFFECTIVE DATE: August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Tommye Cooper, Acting Assistant Administrator for Administration, Office of International Cooperation and Development, U.S. Department of Agriculture, Washington, DC 20250, (202) 475–5246.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are amended to delegate to the Under Secretary for International Affairs and Commodity Programs and, subsequently, to the Administrator of the Office of International Cooperation and Development authority to enter into contracts, grants, cooperative agreements and cost reimbursable agreements, and authority to determine reimbursable indirect costs under sections 1472, 1473, and 1473A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by Pub. L. Number 99–198. Section 1472 authorizes use of contracts, grants, and cooperative agreements to further the research, extension, and teaching programs of the Department and specifically authorizes, notwithstanding the provisions of 31 U.S.C. 6301–6308, use of a cooperative agreement as the legal instrument reflecting a relationship between the Department of Agriculture and a State cooperative institution, State department of agriculture, college, university, other research or educational institution or organization, Federal or private agency, organization, or individual, or any other party, when the objective of the agreement will serve a mutual interest of the parties to the agreement in agricultural research, extension, or teaching activities, including statistical reporting, and all parties will contribute resources to the accomplishment of those objectives. Section 1473 allows payment of necessary indirect costs from funds for international agricultural programs conducted by a State cooperative institution and administered by the Secretary or to funds provided by a Federal agency for such cooperative program or project through a fund transfer, advance, or reimbursement. Section 1473A, notwithstanding any other provision of law, authorizes use of cost-reimbursable agreements with State cooperative institutions without regard to any requirement for competition, for the acquisition of goods or services, including personal services, to carry out agricultural research, extension, or teaching activities of mutual interest.

This rule relates to internal Departmental management. Therefore, pursuant to statutory provisions codified at 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect thereto are impractical and contrary to the public interest, and good cause is found in making this rule effective less than 30 days after publication in the **Federal Register.**

Further, since this rule relates to internal management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

1. The Authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development and Assistant Secretaries

2. Section 2.21 is amended by adding new paragraphs (a) (9) and (10) to read as follows:

§ 2.21 Delegations of authority to the Under Secretary for International Affairs and Commodity Programs.

(a) * * *

(9) Enter into contracts, grants, cooperative agreements, and cost reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3318, 7 U.S.C. 3319a).

(10) Determine amounts reimbursable for indirect costs under international agricultural programs and agreements (7 U.S.C. 3319).

* * * * *

Subpart H—Delegations of Authority by the Under Secretary for International Affairs and Commodity Programs

3. Section 2.64 is amended by adding new paragraphs (a) (9) and (10) to read as follows:

§2.64 Administrator, Office of International Cooperation and Development.

(a) * * *

(9) Enter into contracts, grants, cooperative agreements, and cost reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3318, 7 U.S.C. 3319a).

(10) Determine amounts reimbursable for indirect costs under international agricultural programs and agreements (7 U.S.C. 3319).

For Subpart C.

Dated: August 9, 1986.

Richard E. Lyng,

Secretary of Agriculture.

For Subpart H:

Dated: August 9, 1986.

Daniel G. Amstutz,

Under Secretary for International Affairs and Commodity Programs.

[FR Doc. 86-18437 Filed 8-14-86; 8:45 am]

BILLING CODE 3410-DP-M

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 3258S]

Food Security Act of 1985; Implementation

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends 7 CFR Part 400, General Administrative Regulations, by adding a new Subpart F, to be known as 7 CFR Part 400, Subpart F—Food Security Act of 1985; Implementation; Denial of Benefits. The intended effect of this rule is to deny crop insurance benefits to: (1) Persons convicted of violations of Federal and State controlled substance statutes; (2) persons producing an agricultural commodity on a field on which highly erodible land is predominant; and (3) persons producing an agricultural crop on converted wetland. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended; The Food Security Act of 1985 and 7 CFR Part 12 (51 FR 23496 et seq.).

DATES: Effective date: August 15, 1986. Comment date: Written comments, data, and opinions on this interim rule must be submitted not later than October 14, 1986, to be assured of consideration.

ADDRESS: Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is July 31, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individual, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The Food Security Act of 1985 (the "Act") (Pub. L. 99-198) was enacted on December 23, 1985.

Section 1211 of the Act provides that any person who in any crop year produces an agricultural commodity on a field on which highly erodible land is predominant shall be ineligible for, as to any commodity produced during that crop year by such persons, crop insurance under the Federal Crop Insurance Act.

Section 1221 of the Act provides that any person who in any crop year produces an agricultural commodity on converted wetland shall be ineligible for, as to any commodity produced during that crop year by such person, crop insurance under the Federal Crop Insurance Act.

Section 1764 of the Act provides that, if a person is convicted under Federal or State statutes of planting, cultivation, growing, producing, harvesting, or storing a controlled substance in any crop year, such person shall be ineligible for crop insurance benefits under the Federal Crop Insurance Act, as to any commodity produced during that crop year, and for the four succeeding crop years.

Departmental regulations implementing sections 1211 and 1221 of the Act were published as an interim rule by the Department on Friday, June 27, 1986 at 51 FR 23496 et seq. and will be codified in Part 12 of 7 CFR.

This interim rule prescribes procedures for denying crop insurance benefits to any person convicted of violations of the Federal or State statutes relative to controlled substances, or who are found to violate the Highly Erodible Land Conservation and the Wetland Conservation provisions in the Food Security Act.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without providing a period for public comment before such publication. FCIC is required to comply with the provisions of the Food Security Act of 1985 as of the date of its enactment with respect to the denials of crop insurance benefits outlined above. Since the departmental regulations (7 CFR 12.5(f)) apply to crops planted after June 26, 1986, FCIC has determined that this interim rule shall be effective upon publication in the **Federal Register.**

Written comments are solicited by FCIC for 60 days following publication of this rule and any comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

This rule will be scheduled for review so that any amendments made necessary by public comment may be published in the **Federal Register** as quickly as possible.

List of Subjects in 7 CFR Part 400

Crop insurance, Administrative regulations—Food Security Act of 1985, Denial of benefits.

Interim rule

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends 7 CFR Part 400, General Administrative Regulations, by adding a new Subpart F, to be known as 7 CFR Part 400, Subpart F, Food Security Act of 1985, Implementation; Denial of Benefits, to read as set forth below:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart F—Food Security Act of 1985, Implementation; Denial of Benefits Regulations

Sec.

400.45 Applicability.
400.46 Definitions.
400.47 Denial of crop insurance.
400.48 Protection of interests of landlords and tenants.

Authority: Secs. 1506, 1516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1501 et seq.); Sec. 1244, Pub. L. 99–198.

§ 400.45 Applicability.

The regulations in this subpart implement Chapter XII and Section 1764 of the Food Security Act of 1985 (the Act) requiring the denial of crop insurance to persons who are determined to have performed certain practices prohibited by the Act or who have violated certain federal or State statutes or the regulations implementing the Act. The provisions of this subpart are applicable to all crop insurance policies written by the Federal Crop Insurance Corporation (the Corporation) or reinsured by the Corporation. The provisions of this subpart will be effective for the crop and crop year immediately following the first crop cancellation date occurring after the effective date of the Act for all crop policies reinsured by FCIC, and for all policies and regulations for crop insurance issued by FCIC.

§ 400.46 Definitions.

For the purpose of this regulation and in addition to the definitions included at 7 CFR 12.2, the following definitions are applicable:

(a) "Controlled substance" means any prohibited drug-producing plants including, but not limited to, cacti of the genus *lophophora*, coca bushes (*erythroxylum coca*), marijuana (*cannabis satiua*), opium poppies (*papauer somniferum*), and other drug-producing plants, the planting and harvesting of which is prohibited by federal or State law.

(b) "Person" means any producer, tenant, or landlord, insured under a policy of crop insurance issued by FCIC, or by a multi-peril insurance company whose crop insurance policy is reinsured by FCIC.

(c) "State" means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Marianna Islands, or the Trust Territory of the Pacific.

(d) "The Act" means the Food Security Act of 1985 (Pub. L. 99–198).

§ 400.47 Denial of crop insurance.

(a) Any person who, after December 23, 1985, is convicted under federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance in any crop year shall be ineligible for crop insurance as to any commodity produced by such person during that crop year, and during the four succeeding crop years.

(b) Any person who in any crop year produces an agricultural commodity on a field on which highly erodible land is predominant shall be ineligible for crop insurance as to any commodity produced by such person for that crop year, unless such person is exempt under the provisions of 7 CFR 12.5.

(c) Any person who in any crop year produces an agricultural commodity on converted wetland shall be ineligible for crop insurance as to any commodity produced by such person for that crop year, unless such person is exempt under the provisions of 7 CFR 12.5.

(d) The insurance of any person insured by FCIC who is ineligible under provisions of this subpart will be null and void and any indemnity paid because of such insurance must be returned to FCIC. Any premium paid for insurance coverage declared null and void will be returned.

(e) Any person ineligible for crop insurance under the provisions of this subpart may make application for crop insurance for the crop year following the applicable period of ineligibility by submitting a new application. The previous application and policy of insurance will be cancelled.

(f) Any insurance written by a multi-peril crop insurance company to any person who is ineligible under the provisions of this subpart is not eligible for reinsurance under the Corporation's standard reinsurance contract. Any premium subsidy and expense allowance or loss paid by the Corporation because of such contract will be immediately refunded to the Corporation. Notwithstanding any other provision of law, policies written by multi-peril crop insurance companies to any person ineligible under the provisions of this subpart are null and void. Premiums paid for such policies will be refunded to the person applying for insurance less a reasonable amount for expenses and handling and no indemnity will be paid unless the multi-peril company expressly agrees to continue such policy in effect without FCIC reinsurance.

(g) The determinations of the Soil Conservation Service, the Agricultural Stabilization and Conservation Service and the Secretary of the Interior made within their designated areas of responsibility will be binding upon the Corporation and such determination is not subject to the Corporation's appeal process (Subpart H hereof) (See Part 12 of 7 CFR). Any person determined to be ineligible during any crop year by any other agency under the provisions of the Act will be conclusively presumed to be ineligible for FCIC benefits.

(h) FCIC employees or contractors are required to report all suspected cases of violation of the Act or the regulations to the appropriate agency for a determination of violation. Benefits shall not be paid in such cases pending a determination from the appropriate agency.

§ 400.48 Protection of interests of landlords and tenants.

Any tenant, landlord or producer on the farm separate from the person declared ineligible for crop insurance under the provisions of § 400.47 of this part, will remain eligible for crop insurance on their insurable share in the crop, unless such tenant, landlord, or producer on the farm is:

(a) Also convicted of planting, cultivating, growing, producing, or storing a controlled substance;

(b) In violation of Chapter XII of the Act and the regulations issued thereunder; or

(c) Otherwise termed by FCIC to be ineligible for crop insurance.

§ 400.49 Certification.

Each applicant for insurance under the Federal Crop Insurance Act, as amended, is required to certify on Form AD–1026, prior to the sales closing date for the crop to be insured, that from that crop year such person will not produce an agricultural commodity on highly erodible land or converted wetland during the crop year unless such producer is exempt.

Done in Washington, DC, on March 19, 1986.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-18500 Filed 8-14-86; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Parts 402, 403, 409, 410, 411, 413-433, and 435-451

[Doc. No. 3107S]

General Amendment; Various Crop Insurance Regulations; Annual Premium; Interest Rate Charge

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends all regulations issued by the Federal Crop Insurance Corporation (FCIC) relating to the insurance on specific crops or groups of crops, and codified in Chapter IV of Title 7 of the Code of Federal regulations (7 CFR Part 400, *et seq.*). The intended effect of this rule is to provide that, effective for the 1986 and succeeding crop years, interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month on any unpaid premium balance. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the regulations cited herein under those procedures. The sunset review dates established for all regulations affected by this action remain unchanged.

This action relates to internal agency management. Therefore it is found upon good cause that notice and other public procedure with respect thereto are impractical and contrary to the public interest and good cause is found for making this action effective immediately.

Further, since this action relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background:

FCIC has consistently charged an interest rate or service charge on any unpaid balance due and owing to FCIC. Beginning in crop year 1983, FCIC set the interest rate at one and a half percent (1½%) simple interest on any unpaid premium balance starting on the first day of the month following the first premium billing date. The premium billing date varies from crop to crop, depending on harvest time.

In 1982, FCIC determined that it would be in the best interests of the government to establish the interest rate to be charge on unpaid premium balances at 18.0% simple interest per annum (1½% per month), consistent with the interest rate charged by private firms. Although the rate was higher than the interest based on the value of funds to the Treasury, it was adopted when the Board of Directors considered the interest free period after the premium was due but before the interest start date. The one and one-half (1½%) interest rate remains in effect and is found in subsection 5(b) of all crop insurance policies issued by FCIC.

Interest rates are generally lower now compared to 1982 when the interest policy was established. While some consumer loan rates approach 20% per annum, most farm operating loans carry a rate near 12%. The current policy of the Department of Agriculture generally requires an annual interest charge of fifteen percent (15%) on late payments. The FCIC Board of Directors has determined that the interest rate to be charged for 1986 and subsequent crop years shall be fifteen percent (15%) per annum.

FCIC herewith amends all regulations for insuring crops or groups of crops as contained in 7 CFR Chapter IV, effective for the 1986 and succeeding crop years, to provide that interest applied to any unpaid premium balances will be one and one quarter percent (1¼%) per month simple interest (15% per annum simple interest).

A provision requiring one and one-fourth percent (1¼%) interest per month in lieu of the current one and one-half percent (1½%) would recognize the changes which have occurred in most interest levels since 1982, continue to provide an incentive for timely payment, and not unduly burden those who are forced to delay payment.

List of Subjects

Crop Insurance; Raisin, Peach, Apple, Arizona-California Citrus, Florida Citrus, Grape, Texas Citrus, Forage Seeding, Forage Production, Pea, Sugarcane, Wheat, Barley, Grain Sorghum, Cotton, Potato, Flax, Rice, Peanut, Combined Crop, Oat, Sunflower, Rye, Sugar Beet, Soybean, Corn, Dry Bean, Tobacco-Quota, Tobacco-Guaranteed, Canning & Freezing Sweet Corn, Canning and Processing Tomato, Almond, Texas Citrus Tree, Table Grape, Prevented Planting, Hybrid Seed, Fresh Tomato, Pepper, Walnut, Popcorn, ELS (Pima) Cotton, Fresh Market Sweet Corn, Prune, and Canning and Processing Peach, respectively.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), the Federal Crop Insurance Corporation hereby amends all crop insurance regulations issued by FCIC and currently in effect, covering specific crops or groups of crops (7 CFR Part 402, *et seq.*), effective for the 1986 and succeeding crop years, in the following instances:

1. The authority citation for 7 CFR Parts 402, 403, 405, 409, 410, 411, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, and 451, continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 402.7(d)5.b., 403.7(d)5.b., 409.7(d)5.b., 410.7(d)5.b., 411.7(d)5.b., 413.7(d)5.b., 414.7(d)5.b., 415.7(d)5.b., 416.7(d)5.b., 417.7(d)5.b., 418.7(d)5.b., 419.7(d)5.b., 420.7(d)5.b., 421.7(d)5.b., 422.7(d)5.b., 423.7(d)5.b., 424.7(d)5.b., 425.7(d)5.b., 426.3(d)5.b., 427.7(d)5.b., 428.7(d)5.b., 429.7(d)5.b., 430.7(d)5.b., 431.7(d)5.b., 432.7(d)5.b., 433.7(d)5.b., 435.7(d)5.b., 436.7(d)5.b., 437.7(d)5.b., 438.7(d)5.b., 439.7(d)5.b., 440.7(d)5.b., 441.7(d)5.b., 442.7(d)5.b., 443.7(d)5.b.,

444.7(d)5.b., 445.7(d)5.b., 446.7(d)5.b., 447.7(d)5.b., 448.7(d)5.b., 449.7(d)5.b., 450.7(d)5.b., and 451.7(d)5.b., are revised to read as follows:

* * * * *

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

* * * * *

Done in Washington, DC, on July 17, 1986.

Michael A. Bronson,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-18432 Filed 8-14-86; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Parts 403, 405, 409, 411, 413, 415-425, 427-433, 435-439, 446-448, 450 and 451

[Doc. No. 0093A]

Crop Insurance; Various Commodities; Peaches, Apples, Arizona—California Citrus, etc.

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Peach, Apple, Grape, Forage Production, Pea, Wheat, Barley, Grain Sorghum, Cotton, Potato (all states except Florida and certain California counties), Flax, Rice, Peanut, Oat, Sunflower, Rye, Sugar Beet (all states except Arizona and California), Soybean, Corn, Dry Bean, Tobacco Quota Plan, Tobacco Guaranteed Plan, Canning and Freezing Sweet Corn, Canning and Processing Tomato, Almond, Walnut, Popcorn, ELS Cotton, Prune and Canning and Processing Peach Crop Insurance Regulations (7 CFR Parts 403, 405, 411, 415, 416, 418, 419, 420, 421, 422, 423, 424, 425, 427, 428, 429, 430, 431, 432, 433, 435, 436, 437, 438, 439, 446, 447, 448, 450 and 451 respectively), effective for the 1987 and succeeding crop years, and the Arizona-California Citrus, Texas Citrus, Sugarcane, Potato (the remaining California counties and Florida), and Sugar Beet (Arizona and California only) Crop Insurance Regulations (7 CFR Part 409, 413, 417, 422, and 430 respectively), effective for the 1988 and succeeding crop years. The intended effect of this rule is to provide for an alternative insurance offer in lieu of cancellation for failure to furnish production records to determine guarantee. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Effective August 15, 1986.

Comment. Written comments, data, and opinions on this interim rule must be submitted not later than October 14, 1986, to be sure of consideration.

ADDRESS: Wittten comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations remains unchanged and has been previously published for each regulation.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) Major increases in costs of prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

In May 1986, the FCIC Board of Directors reviewed the matter of cancellation of the crop insurance policy for failure to furnish production records for those programs under the Actual Production History (APH) program. This consideration by the Board was in response to comments submitted during hearing on the Actual Production History (APH) method of insurance in September 1985.

The APH concept of yield guarantees establishes a direct relationship between proven production capability of the producer, and the insurance guarantee or premium rates. It requires that the insured submit records of annual production.

Those opposed to the record requirement as a condition of continued insurance eligibility included objected to the alleged invasion of privacy and claimed that many farmers would not be willing to furnish records establishing annual production unless they have a loss and a potential indemnity. Comments stated that an economic incentive like a reduced future yield guarantee would be preferable to cancellation and would give the insured an option while preseving the Corporation's valid interest. Most comments supported the APH concept as a means of making an equitable insurance offer to the better producers of an area but recommended that FCIC develop a plan to offer reduced insurance guarantees when a producer failed to voluntarily furnish records.

The rationale for adoption of the APH concept was to correct the problem of adverse selection inherent in the area coverage plans of insurance. Adverse selection occurs when the best insurance offer is made to the highest risk producer and the poorest insurance offer is made to the lowest risk producer. It is characterized by having insureds with higher than average risk expectations without commensurate higher premiun rates. Adverse selection results in higher losses and ultimately in higher premium rates and thus, over the long term, severely limits participation levels. Adverse selection is best addressed by establishing a direct relationship between proven production capability of individual producers and their insurance guarantee and premium rates. The APH program accomplishes this objective.

Upon review of the cancellation provision for failure to furnish production records, the Board determined that an unnecessary hardship on many producers may result.

While maintaining the concept of providing insurance based on actual production history, when such production data is furnished, the Board determined that an alternative insurance offer would be made to those who failed to furnish production records. Thus the integrity of the APH program remains intact while the provision to cancel the policy for not furnishing production records has been modified to allow for an alternative offer of insurance coverage.

The changes in each of the regulations, except Cotton, Canning and Processing Peaches, Prunes and Rice involve moving the provision requiring submission of a production report prior to the next crop year for determining the yield guarantee from section 15.c. to section 4. In cases where such production report cannot be furnished, the Corporation will assign a yield to be used in establishing the yield history. This will provide an alternative insurance offer in lieu of cancellation for failure to furnish production records.

The change in the Canning and Processing Peach and the Prune crop insurance regulations removes the provision requiring submission of a production report prior to the next crop for determining the yield guarantee from subsection 15.c. The production reporting requirements are already contained in section 3.

The change in the Cotton and Rice crop insurance regulations is to move the provision requiring submission of a production report prior to the next crop year for determining the yield guarantee from subsection 3.d. to section 4. In cases where such production report cannot be furnished, the Corporation will assign a yield to be used in establishing the yield history. This will provide an alternative insurance offer in lieu of cancellation for failure to furnish production records.

E. Ray Fosse, Manager, FCIC, has determined that an emergency situation exists which precludes notice and other public procedure because the current policies for insuring Peach, Apple, Arizona-California Citrus, Grape, Texas Citrus, Forage Production, Pea, Sugarcane, Wheat, Barley, Grain Sorghum, Cotton, Potato, Flax, Rice, Peanut, Oat, Sunflower, Rye, Sugar Beet, Soybean, Corn, Dry Bean, Tobacco Quota Plan, Tobacco Guaranteed Plan, Canning and Freezing Sweet Corn, Canning and Processing Tomato, Almond, Walnut, Popcorn, ELS Cotton, Prune and Canning and Processing Peach Crop Insurance Regulations do not provide the producers sufficient time to furnish the Corporation with adequate production records and, as a result, many producers could find themselves without insurance coverage which may be badly needed.

This rule is effective upon publication in the **Federal Register**. Written comments are solicited by FCIC for 60 days following publication of this rule in the **Federal Register**. Any comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

This rule will be scheduled for review so that any amendments made necessary by public comment may be published in the **Federal Register** as quickly as possible.

List of Subjects

Crop Insurance; Peach, Apple, Arizona-California Citrus, Grape, Texas Citrus, Forage Production, Pea, Sugarcane, Wheat, Barley, Grain Sorghum, Cotton, Potato, Flax, Rice, Peanut, Oat, Sunflower, Rye, Sugar Beet, Soybean, Corn, Dry Bean, Tobacco Quota Plan, Tobacco Guaranteed Plan, Canning and Freezing Sweet Corn, Canning and Processing Tomato, Almond, Walnut, Popcorn, ELS Cotton, Prune and Canning and Processing Peach respectively.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Peach, Apple, Grape, Forage Production, Pea, Wheat, Barley, Grain Sorghum, Cotton, Potato (all states except Florida and certain California counties), Flax, Rice, Peanut, Oat, Sunflower, Rye, Sugar Beet (all states except Arizona and California), Soybean, Corn, Dry Bean, Tobacco Quota Plan, Tobacco Guaranteed Plan, Canning and Freezing Sweet Corn, Canning and Processing Tomato, Almond, Walnut, Popcorn, ELS Cotton, Prune and Canning and Processing Peach Corp Insurance Regulations (7 CFR Parts 403, 405, 411, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 427, 428, 429, 430, 431, 432, 433, 435, 436, 437, 438, 439, 446, 447, 448, 450 and 451 respectively), effective for the 1987 and succeeding crop years, and the Arizona-California Citrus, Texas Citrus, Sugarcane, Potato (the remaining California counties and Florida), and Sugar Beet (Arizona and California only) Crop Insurance Regulations (7 CFR Parts 409, 413, 417, 422, and 430 respectively), effective for the 1988 and succeeding crop years, in the following instances:

1. The authority citations for 7 CFR Parts 403, 405, 409, 411, 413, 415—425, 427—439, 433, 435, 446—447, 450 and 451 continue to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. In §§ 405.7(d), 409.7(d), 411.7(d), 415.7(d), 416.7(d), 417.7(d), 418.7(d), 419.7(d), 420.7(d), 422.7(d), 423.7(d), 424.7(d), 427.7(d), 428.7(d), 429.7(d), 431.7(d), 432.7(d), 433.7(d), 437.7(d), 439.7(d), and 447.7(d), section 4. of the FCIC Policy is amended by adding subsection 4.d. to read as follows:

§§ 405.7, 409.7, 411.7, 415.7, 416.7, 417.7, 418.7, 419.7, 420.7, 422.7, 423.7, 224.7, 427.7, 428.7, 429.7, 431.7, 432.7, 433.7, 437.7, 439.7, and 447.7 The application and policy.

* * * * *

(d) * * *

4. * * *

d. You must furnish a report of production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

* * * * *

3. In §§ 403.7(d), 413.7(d), 421.7(d), 425.7(d), 430.7(d), 435.7(d), 436.7(d), 446.7(d), 448.7(d), section 4. of the FCIC Policy is amended by adding subsection 4.e. to read as follows:

§§ 403.7, 413.7, 421.7, 425.7, 430.7, 435.7, 436.7, 446.7, and 448.7 The application and policy.

* * * * *

(d) * * *

4. * * *

e. You must furnish a report of production to use for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be

used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will not be more than 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

* * * * *

§ 438.7 [Amended]

4. In § 438.7(d), section 4. of the FCIC Policy is amended by adding subsection 4.f. to read as follows:

§ 438.7 The application and policy.

* * * * *

(d) * * *

4. * * *

f. You must furnish a report of production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will not be more the 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous corp year, the yield determined in adjusting your indemnity claim will be used as your production report.

* * * * *

§§ 421.7 and 424.7 [Amended]

5. In §§ 421.7(d) and 424.7(d), section 3. of the FCIC Policy is amended by removing Subsection d, removing the "and" contained in subsection c. and adding a period at the end thereof, and adding an "and" to subsection b. at the end.

6. In §§ 403.7(d), 405.7(d), 409.7(d), 411.7(d), 413.7(d), 415.7(d), 416.7(d), 417.7(d), 418.7(d), 419.7(d), 420.7(d), 422.7(d), 423.7(d), 425.7(d), 427.7(d), 428.7(d), 429.7(d), 430.7(d), 431.7(d), 432.7(d), 433.7(d), 435.7(d), 436.7(d), 437.7(d), 438.7(d), 439.7(d), 446.7(d), 447.7(d), 448.7(d), 450.7(d) and 451.7(d), section 15. of the FCIC Policy is amended by removing subsection c. in its entirety and by redesignating subsections d, e, f, and g to c, d, e, and f.

Done in Washington, DC on July 9, 1986.

Michael A. Bronson,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-18431 Filed 8-14-86; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 418, 419, 420, 421, 424, 427, 432, and 448

[Doc. No. 3531S]

General Amendment; Prevented Planting Endorsement to Barley, Corn, Cotton, ELS Cotton, Grain Sorghum, Oat, Rice, and Wheat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby confirms as final the interim rule which amends the Wheat, Barley, Grain Sorghum, Cotton, Rice, Oat, Corn, and ELS Cotton Crop Insurance Regulations (7 CFR Parts 418, 419, 420, 421, 424, 427, 432, and 448, respectively), effective for the 1986 and succeeding crop years. The intended effect of this rule is to confirm the interim rule published on Friday, February 28, 1986, at 51 FR 7045, to provide for a prevented planting optional endorsement allowing prevented planting insurance coverage in all areas where feed grains, wheat, cotton or rice are produced. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for the regulations affected by this action remain unchanged are made part of each regulation affected by this rule.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Friday, February 28, 1986, FCIC published an interim rule amending the Wheat, Barley, Grain Sorghum, Cotton, Rice, Oat, Corn, and ELS Cotton Crop Insurance Regulations to provide for a prevented planting optional endorsement allowing prevented planting insurance coverage in all areas where feed grains, wheat, cotton or rice are produced.

Merritt W. Sprague, then Manager, FCIC, had determined that an emergency situation existed which precluded notice and other public procedure. The Food Security Act of 1985 provides that if the Secretary of Agriculture determines that producers were prevented from planting any portion of the acreage intended for feed grains, wheat, cotton, or rice to such crop or other non-conserving crops because of drought, flood, or other natural disaster, or other condition beyond the control of the producers, the Secretary shall make prevented planting disaster payments to the producers. Such producers will not be eligible for such payments if prevented planting crop insurance is available to the producers under the Federal Crop Insurance Act.

The present FCIC prevented planting crop insurance policy was offered on an experimental basis in a limited number of counties. It did not cover loss from causes other than excess moisture as required by the Food Security Act of 1985 relative to prevented planting disaster payments. The experience gained to date indicates that the pilot program should not be expanded as such a program would be unlikely to attract participation except from those

producers who perceive themselves to be in a very high risk situation.

The Corporation therefore decided to provide a prevented planting program consistent with the requirements of the Food Security Act of 1985 in all areas. The Corporation also maintains the current experimental prevented planting program in those counties where such program was being offered as a viable alternative for at least the 1986 crop year.

FCIC determined that, because of the late passage of the Food Security Act of 1985, and the need to provide a prevented planting program consistent with the requirements found in the Food Security Act of 1985 relative to prevented planting disaster payments, it was prudent and cost effective to offer the new prevented planting endorsement to all producers of certain ASCS program crops, and allow those prevented planting program policyholders who were insured under the pilot program the option to retain that program, or to cancel the pilot policy and apply for the newly available coverage.

FCIC is providing a prevented planting insurance endorsement to crop insurance contracts on the acreage of Agricultural Stabilization and Conservation Service (ASCS) program crops (wheat, barley, corn, grain sorghum, oats, upland cotton, ELS cotton, and rice) when the producers are participating in the ASCS Acreage Reduction or set-aside programs.

The Prevented Planting Crop Insurance endorsement contained herein provides for protection against prevention of planting due to drought, flood, or other natural disaster caused by adverse weather conditions beyond the control of the producer occurring within the insurance period.

To be eligible for protection, the producer must participate in the acreage reduction or set-aside program offered by ASCS and hold a valid crop insurance contract on the qualifying crop.

All existing prevented planting crop insurance policies under the pilot program will be honored through the current crop year. Insurance will be made available under the prevented planting crop insurance endorsement contained herein to persons who had such insurance if the policyholders agree to cancel their pilot program policies. A new application for insurance must be signed before the applicable sales closing date to effect a change.

Written comments on this interim rule were solicited by FCIC for 60 days after publication in the **Federal Register**. This rule was scheduled for review so that any amendment made necessary by comments received may be published as quickly as possible but no comments were received. Therefore the interim rule as published is hereby adopted as final.

List of Subjects in 7 CFR Parts 418, 419, 420, 421, 424, 427, 432, and 448

Crop Insurance; Wheat, Barley, Grain Sorghum, Cotton, Rice, Oats, Corn, and ELS Cotton.

Final Rule

Accordingly, the interim rule published in the **Federal Register** on Friday, February 28, 1986, at 51 FR 7045, is adopted as a final rule without change.

Done in Washington, DC, on June 13, 1986.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-18499 Filed 8-14-86; 8:45 am]

BILLING CODE 3410-08-M

Soil Conservation Service

7 CFR Part 652

Relocation Assistance

AGENCY: Soil Conservation Service, USDA.

ACTION: Final rule; removal of rule.

SUMMARY: This rule removes and reserves 7 CFR Part 652, Relocation Assistance, because the material in this part is covered in 7 CFR Part 21 which implements the Uniform Relocation Assistance and Real Property Acquisition Polices Act of 1970 (42 U.S.C. 4601–4655).

EFFECTIVE DATE: August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Wayne F. Maresch, Director, Administrative Services Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, or telephone (202) 447–5111.

SUPPLEMENTARY INFORMATION: The common Departmental rule set forth in 7 CFR Part 21 implements the Uniform Act. This Act requires the Federal Government to provide fair, consistent, and equitable treatment to owners of real property to be acquired for federal or federally assisted programs and persons displaced from their dwellings, businesses, or farms as a result of such acquisition. Implementation of this common rule is not necessary below the Departmental level. Section 652.3 pertains to an SCS delegation of authority that is not needed under the common rule.

On April 1, 1986, SCS published a proposal to remove and reserve 7 CFR Part 652 (51 FR 11053). No comments on the proposal were received.

List of Subjects in 7 CFR Part 652

Purpose and scope, Relocation agreement, Authority delegations (Government agencies).

PART 652—[Removed]

Accordingly, 7 CFR Part 652 is removed and reserved.

Authority: 42 U.S.C. 4601–4655

Wilson Scaling,

Chief.

[FR Doc. 86-18485 Filed 8-14-86; 8:45 am]

BILLING CODE 3410-16-M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Regulation 376]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 376 establishes the quantity of California-Arizona Valencia oranges that may be shipped to market during the period August 15–21, 1986. The regulation is needed to balance the supply of fresh Valencia oranges with market demand for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 376 (§ 908.676) is effective for the period August 15–21, 1986.

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 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 acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1985–86. The committee met publicly on August 12, 1986, to consider the current and prospective conditions of supply and demand and recommended the quantity of Valencia oranges deemed advisable to be handled during the specified week. The committee reports that the market for Valencia oranges is slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which this regulation is based became available and the effective date necessary to effectuate the declared policy of the act.

Interested persons were given opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and the effective date.

List of Subjects in 7 CFR Part 908

Agricultural Marketing Service, Marketing agreements and orders, California, Arizona, Oranges, Valencias.

1. The authority citation for 7 CFR Part 908 continues to read:

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

2. Section 908.676 is added to read as follows:

§ 908.676 Valencia orange regulation 376.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period August 15, 1986, through August 21, 1986, are established as follows:

(a) District 1: 345,000 cartons;
(b) District 2: 405,000 cartons;
(c) District 3: Unlimited cartons.

Dated: August 13, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–18586 Filed 8–14–86; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 923

Washington Cherry Regulation 22; Amendment 2; Sweet Cherries Grown in Designated Counties in Washington; Amendment of Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the interim final rule which changed the row count/row size designations of the pack requirements to more accurately reflect the size of the individual cherries in similarly marked containers, and revised the container requirements for fresh cherries to permit the marketing of "consumer" type containers on a commercial basis. This action is designed to promote container pack uniformity and flexibility in the marketing of sweet cherries.

DATE: The final rule becomes effective August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Washington, DC 20250. Telephone 202–447–5697.

SUPPLEMENTARY INFORMATION: This 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 acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

This action adopts as a final rule the interim final rule which amended Washington Cherry Regulation 22 to include additional row count/row size designations, and also to permit the marketing of "consumer" type containers. The interim final rule was issued on June 19, 1986, and published in the **Federal Register** on June 25, 1986, (51 FR 23039). Interested persons were given until July 25, 1986, to submit comments. No comments were received.

The interim final rule and this final rule are issued under the marketing agreement and Order No. 923 (7 CFR Part 923), regulating the handling of sweet cherries grown in designated counties in Washington. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Like the interim final rule, this final rule is based upon the unanimous recommendation of and the information submitted by the Washington Cherry Marketing Committee, as well as other available information. The final rule adopts the requirements that were established in the interim final rule in effect since June 19, 1986.

The interim final rule added additional row count/row size designations to the pack requirements to help assure that the individual cherries in each container are more uniform. The previous row count/row size designations were not precise enough to prevent significant diameter variations between the individual cherries within similarly marked containers. The previous designations caused confusion between handlers and the trade.

In addition, the interim final rule revised the container requirements to permit the packing of "consumer" type containers on a commercial basis. The changes allow the shipment of containers weighing 12 pounds or less either individually or in master shipping containers. "Consumer" type packages have been packed and shipped under the order's experimental container provisions in recent years. Hence, these types of containers should continue to be authorized from season to season for commercial shipment in the interest of the growers, handlers, and consumers.

After considering all relevant matter presented, the information and the recommendations submitted by the

committee, and other available information, it is found that adoption as a final rule of Washington Cherry Regulation 22, Amendment 2, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to postpone the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) The requirements finalized by this action are identical to those effective since June 19, 1986, (51 FR 23039, June 25, 1986); and (2) no useful purpose would be served by delaying the effective date of this action.

List of Subjects in 7 CFR Part 923

Agricultural Marketing Service, Marketing agreements and orders, Cherries, Washington.

PART 923—[AMENDED]

1. The authority citation for 7 CFR Part 923 continues to read as follows:

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

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. The interim final rule published in the **Federal Register** on June 25, 1986, (51 FR 23039) amending § 923.322 is adopted as a final rule.

Dated: August 11, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–18486 Filed 8–14–86; 8:45 am]

BILLING CODE 3410-02-M

[Docket No. HRPCIA-1]

7 CFR Part 1240

Honey Research, Promotion, and Consumer Information Order; Decision Establishing Final Order Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on July 21, 1986 (51 FR 26147) which added Part 1240—Honey Research, Promotion, and Consumer Information Order. In the July 21, 1986 rule, it was intended that §§ 1240.1–1240.67 be added to as existing Part 1240 of Chapter XI. Part 1240 was previously established on May 16, 1986 (51 FR 17917) when procedures for the conduct of referenda and rules of practice were issued. The July 21, 1986 (51 FR 26147) document, which established the text of the honey order, should have amended the existing Part 1240 instead of amending Chapter XI of Title 7 by adding Part 1240.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250 (202) 447–5698.

The following correction is made to FR Doc. 86–16292. The last sentence of the first column of page 26148 is corrected to read "Chapter XI Part 1240 of Title 7 is hereby amended by adding §§ 1240.1–1240.67 to read as follows:"

Authority: Pub. L. 98–590, 7 U.S.C. 4601–4612.

Dated: August 11, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 86–18370 Filed 8–14–86; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 86–069]

Restrictions on Importation of Horses From Norway

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations by adding Norway to the list of countries in which contagious equine metritis (CEM) exists and restricting the importation into the United States of certain horses from Norway. This action is necessary because CEM has been found to exist in Norway, and restrictions on the importation of horses from Norway are needed in order to protect the livestock of the United States from the disease.

DATES: Effective date is August 15, 1986. Written comments must be received on or before October 14, 1986.

ADDRESSES: Written comments should be submitted to Steven R. Poore, Acting Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86–069. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Dan Sheesley, Import-Export Operations Staff, VS, APHIS, USDA, Room 760, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) regulate, among other things, the importation into the United States of certain horses in order to prevent the introduction into the United States of various diseases, including contagious equine metritis (CEM). CEM is a venereal disease of horses that affects fertility and breeding.

Section 92.2(i)(1) of the regulations lists the countries in which CEM exists and, with certain exceptions, prohibits the importation of horses from the countries and horses which have been in any such country within the 12 months immediately preceding their export.

This document amends the regulations by adding Norway to the list of countries in § 92.2(i)(1) in which CEM exists. The Office of International Epizootics confirmed reports that CEM has been discovered in horses in Norway.

Emergency Action

Dr. John K. Atwell, Deputy Administrator for Veterinary Services, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Under the circumstances explained above, it is necessary that the rule be made effective immediately in order to help prevent the introduction of CEM into the United States.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are unnecessary, and good cause is found for making this interim rule effective upon publication. Comments are being solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for

consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. Five horses were imported from Norway is Fiscal Year 1985. This compares with approximately 3,340 stallions and mares imported into the United States from countries affected with CEM during Fiscal Year 1984 and with approximately 36,000 horses of all classes imported into the United States during that same period.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, 9 CFR Part 92 is amended as follows:

1. The authority citation for Part 92 continues to read as set forth below:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.2 [Amended]

2. Paragraph (i)(1) of § 92.2 is amended by inserting "Norway," immediately after "Northern Ireland,".

Done at Washington, DC, this 12th day of July 1986.

B.G. Johnson,

Deputy Administrator, Veterinary Services.

[FR Doc. 86–18439 Filed 8–14–86; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Ch. I

Revocation of Policy Statements

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; revocation, correction.

SUMMARY: The Nuclear Regulatory Commission is correcting the document appearing in the **Federal Register** on November 1, 1985 (50 FR 45597) that revoked policy statements published by the Commission which have been superseded by agency action or became obsolete in some other way and listed current NRC policy statements. This action is necessary to remove an obsolete policy statement that was inadvertantly included in the listing of current policy statements.

EFFECTIVE DATE: August 15, 1986.

ADDRESS: Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: John D. Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–7086 or Toll Free: 800–368–5642.

1. On page 45598, item 11 "Generic rulemaking to improve nuclear power plant licensing; interim, extension of comment period (44 FR 8276; February 9, 1979)" should be removed. This policy statement extended the comment period on the interim policy statement published on December 14, 1978 (43 FR 58377) until March 14, 1979, and is therefore obsolete. It was erroneously included in this list.

Dated at Washington, DC, this 11th day of August, 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86–18501 Filed 8–14–86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-ANE-50; Amdt. 39-5370]

Airworthiness Directives; Allison Gas Turbine Division Model 501-D13, -D13A, -D13D, and -D13H Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires replacing certain thrust sensitive switch assemblies installed in Allison Gas Turbine Division Model 501–D13, –D13A, –D13D, and –D13H engines. The AD is needed to prevent unwanted autofeather (resulting in loss of thrust) or the inability to autofeather when required (resulting in excessive drag in the case of an engine failure).

DATES: *Effective*—September 15, 1986.

Compliance required within the next 60 days after the effective date of this AD, unless already accomplished.

Incorporation by Reference—Approved by the Director of the Federal Register on September 15, 1986.

ADDRESSES: The applicable alert bulletin may be obtained from Allison Gas Turbine Division, General Motors Corp., P.O. Box 420, Indianapolis, Indiana 46206–0420.

A copy of this bulletin is contained in the Rules Docket at the Office of Regional Counsel, FAA, ATTN: Rules Docket No. 82–ANE–50, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Ty Krolicki, Chicago Aircraft Certification Office, Propulsion Branch, ACE–140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694–7032.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD which would require replacing certain thrust sensitive switch assemblies installed in Allison Gas Turbine Division Model 501–D13, –D13A, –D13D, and –D13H engines was published in the **Federal Register** on May 22, 1986 (51 FR 18799).

The FAA has determined that Allison Model 501–D13, –D13A, –D13D, and –D13H turboprop engine reduction gear assemblies with thrust sensitive switch

assembly P/N's 6792891, 6794122, 6794359, 6807776, 23005483, or 23005485 are subject to malfunction. Failure of the thrust sensitive switch can result in contact being made internally causing unwanted autofeather or in an electrical short circuit which opens a circuit breaker rendering the autofeather system inoperative. Since this condition is likely to exist or develop on other engines of the same type design, the AD requires replacement of the thrust sensitive switch assemblies with a different P/N assembly containing a single carbon contact switch instead of the two microswitches contained in each assembly being replaced. Extensive experience obtained in operation of T56 series engines, the military counterpart of the civilian 501 series engine, which utilize the carbon contact switch shows that it improves reliability by a factor of at least ten, compared to the microswitch.

Interested persons have been afforded an opportunity to participate in the making of this amendment. The comment period closed June 23, 1986.

No comments to the proposal were received. One comment was received, however, in response to a previous Notice of Proposed Rulemaking (NPRM) on this matter which was published in the **Federal Register** on January 17, 1983 (48 FR 1981). Although that NPRM was subsequently withdrawn because it became apparent that one of the proposed compliance action options did not improve airworthiness, the comment is germane and is addressed here. The commenter felt that operation of Lockheed 188 series aircraft should be permitted with the old thrust sensitive switch assembly part numbers subject to the Airplane Flight Manual performance limitations and Minimum Equipment List requirements. The FAA does not agree because this approach could lead to a situation where the old part number thrust sensitive switch assemblies would remain in service indefinitely. Furthermore, it will be possible for the Manager of the Chicago Aircraft Certification Office to authorize this sort of an approach under the "equivalent means of compliance" clause of the AD, as currently written, if the circumstances of a particular situation warrant. Accordingly, the proposal is adopted without change.

Conclusion:

The FAA has determined that only 11 small entities will be affected significantly by this regulation. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

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

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

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD):

Allison Gas Turbine Division, General Motors Corp. (Allison, formerly Detroit Diesel Allison): Applies to Allison 501–D13, –D13A, –D13D, and –D13H engine reduction gear assemblies equipped with thrust sensitive switch assembly, P/N's 6792891, 6794122, 6794359, 6807776, 23005483, or 23005485.

Compliance is required within 60 days after the effective date of this AD, unless already accomplished.

To prevent the possibility of unwanted autofeather or the inability to autofeather when required, accomplish the following:

Replace thrust sensitive switch assemblies, P/N's 6792891, 6794122, 6794359, 6807776, 23005483, and 23005485 with P/N 6870559, a single carbon contact switch assembly, in accordance with the detailed instructions provided in Allison Commercial Engine Alert Bulletin CEB–A–73–84, Revision 2, dated October 1, 1984, or FAA approved equivalent.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Chicago Aircraft Certification Office, may adjust the compliance time specified in this AD.

Allison Commercial Engine Alert Bulletin CEB–A–73–84, Revision 2, dated October 1, 1984, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Allison Gas Turbine Division, General Motors Corp., P.O. Box 420, Indianapolis, Indiana 46206–0420. This document also may be examined at the Office of the Regional Counsel, FAA, ATTN: Rules Docket No. 82–ANE–50, 12 New England Executive Park, Burlington, Massachusetts 01803 and may be examined weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

This amendment becomes effective on September 15, 1986.

Issued in Burlington, Massachusetts, on July 25, 1986.

Clyde DeHart, Jr.,

Acting Director, New England Region.

[FR Doc. 86–18406 Filed 8–14–86; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 86–NM–125–AD; Amdt. 39–5394]

Airworthiness Directives; Boeing Model 747–100SR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires structural inspections and repairs or replacements, as necessary, on certain high time Boeing Model 747–100SR series airplanes to ensure continued airworthiness. Some Boeing Model 747–100SR series airplane fuselage and nacelle struts are approaching the manufacturer's original objective fatigue design life. This amendment adds the Boeing Model 747–100SR series airplanes to the "Supplemental Structural Inspection Program for Large Transport Category Airplanes" and defines structural maintenance requirements for certain identified structural components.

EFFECTIVE DATE: September 22, 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. Owen E. Schrader, Aerospace Engineer, 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 Regulation to include an airworthiness directive to require the inspection for the pressure-critical fuselage structure and the nacelle strut structure for cracking and subsequent repair of cracked structure was published in the **Federal Register** on June 3, 1986 (51 FR 19849). The comment period for the proposal closed on July 25, 1986.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received.

On behalf of its members, the Air Transport Association (ATA) of America stated no objection to the proposed rule.

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.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

No airplanes of U.S. registry will be affected by this AD, therefore there is no cost impact of this AD to U.S. operators.

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 747 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 (14 CFR 39.13) 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 747-100SR series airplanes listed in section 3.0 of Boeing Document No. D6-35655 "Supplemental Structural Inspection Document" (SSID), approved March 22, 1986, certificated in any category. Compliance is required as indicated in the body of the AD.

To ensure the continuing structural integrity of these airplanes, accomplish the following, unless already accomplished:

A. Within one year after the effective date of the AD, incorporate a revision into the FAA-approved maintenance inspection program which provides no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) listed in Boeing Document D6-35655, approved March 22, 1986, or later FAA-approved revisions. The required DTR value for each SSI is listed in the document. The revision to the maintenance program must include and be implemented in accordance with the procedures in sections 5.0 and 6.0 of the SSID.

B. Cracked structure must be repaired before further flight in accordance with an FAA-approved method.

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.

D. 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.

E. Operators who have acceptably incorporated Boeing Document No. D6-35655, approved March 22, 1986, or later FAA-approved revisions, into their approved maintenance program are exempt from the requirements of 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 amendment becomes effective September 22, 1986.

Issued in Seattle, Washington, on August 8, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-18399 Filed 8-14-86; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 86-NM-113-AD; Amdt. 39-5391]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action supersedes AD 84-21-04, which requires inspection of the Number 3 cargo door cutout, with a new AD which increases the area to be inspected, adds additional repetitive inspections for repair of frames, and provides a modification for uncracked frames which would terminate the requirement for repetitive inspections. This action is prompted by the recent detection of a severed frame adjacent to the area inspected in accordance with the existing AD. The repair specified in the existing AD has been found to be inadequate for preventing cracking adjacent to the repair. Failure of the forward frame of the Number 3 cargo door could result in rapid depressurization of the airplane. Because of these developments, and other information provided to the FAA, the amendment of AD 84-21-04, previously proposed on May 21, 1986 (51 FR 18602), is no longer considered appropriate, and that Notice of Proposed Rulemaking (NPRM) will not be adopted.

EFFECTIVE DATE: September 5, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124. The document may be examined at 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: This action supersedes AD 84-17-02, which required inspections of the Number 3 cargo door cutout, with a new AD which increases the area to be inspected, adds additional repetitive inspections for repair to frames, and provides a modification for uncracked frames which would terminate the requirements for repetitive inspections.

Recently, the FAA has become aware of a severed forward frame of the Number 3 cargo door cutout below the area required to be inspected in accordance with AD 84-21-04. Moreover, the repari specified in the original AD has been found inadequate to prevent cracking in adjacent areas of the frame. Failure of the frame results in transfer of the loads to the local fuselage skin, thus, greatly reducing the fatigue life of the skin. Such increases in skin loads will precipitate fatigue skin cracks and could result in the separation of the door from the airplane and subsequent rapid decompression.

In light of this new data, and based on the fact that this condition is likely to exist or develop on other airplanes of the same type design, the FAA has determined that it is necessary to supersede Ad 84-21-04 with a new airworthiness directive to require inspection and repair, if necessary, of additional portions of the forward frame of the Number 3 cargo door cutout on certain Boeing Model 727-200 series airplanes. In addition, this new AD requires that airplanes which have been previously repaired must be repetitively inspected for cracks in the frame area adjacent to the repair. Finally, terminating action is provided for inspections of previously inspected frames which have been found uncracked.

The proposal to amend AD 84-21-04, which was published in the **Federal Register** on May 21, 1986 (51 FR 18602) would have provided a preventive modification which, if incorporated, would terminate the requirement in AD 84-21-04 for repetitive inspections. Since the publication of the NPRM, the manufacturer has notified FAA that the preventative modification called for the NPRM is not designed to be installed on a cracked frame which has been repaired in accordance with the structural repair manual. Also, it has been determined that the preventative modification does not improve the fatigue life of a cracked frame and, therefore, its incorporation should not terminate the repetitive inspection requirements on a repaired frame. In consideration of these developments, the FAA had determined that the amendment to AD 84-21-04 proposed in the NPRM is not appropriate and the NPRM will not be adopted.

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

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 727-200 series airplanes equipped with the Number 3 cargo door, certificated in any category, listed in Boeing Alert Service Bulletin 727-53A0169, Revision 2, dated May 23, 1986.

To detect cracks in the foward frame of the Number 3 cargo door cutout, accomplish the following:

A. Within the next 300 landings after the effective date of this AD or prior to accumulating 29,000 landings, whichever occurs later, unless accomplished within the last 1900 landings, visually inspect the forward frame of the Number 3 cargo door cutout for cracks in accordance with paragraph C. of the Accomplishment Instructions in Boeing Alert Service Bulletin Number 727-53A0169, Revision 2, dated May 23, 1986, or later FAA-approved revisions. If any cracks are detected, repair in accordance with paragraph C. of this AD. Repeat the inspections at intervals not to exceed 2,200 landings.

B. Within the next 300 landings after the effective date of this AD or prior to accumulating 35,000 landings, whichever occurs later, unless accomplished within the last 1900 landings, visually inspect the forward frame of the Number 3 cargo door cutout for cracks in accordance with paragraphs D., and E. of the Accomplishment Instructions in Boeing Alert Service Bulletin Number 727-53A0169, Revision 2, dated May 23, 1986, or later FAA-approved revisions. If any cracks are detected, repair in accordance with paragraph C. of this AD. Repeat the inspectionss at intervals not to exceed 2,200 landings.

C. Repair any cracks detected in the forward frame of the Number 3 cargo door cutout in accordance with paragraph G. of the Accomplishment Instructions in Boeing Alert Service Bulletin 727-53A0169, Revision 2, dated May 23, 1986, or later FAA-approved revisions. Reinspect, at intervals not to exceed 2,200 landings, all areas of the forward frame not covered by the repair, in accordance with the Accomplishment Instructions of paragraphs C., D., and E. of Boeing Alert Service Bulletin 727-53A0169, Revision 2, dated May 23, 1986, or later FAA-approved revisions.

D. Modification of uncracked frames in accordance with Figure 2 of Boeing Alert Service Bulletin 727-53A0169, Revision 2, dated May 23, 1986, or later FAA-approved revisions constitutes terminating action for repetitive inspections required by this AD.

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

F. 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.

This amendment supersedes AD 84-21-04, Amendment 39-4938.

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 amendment becomes effective September 5, 1986.

Issued in Seattle, Washington, on August 5, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-18396 Filed 8-14-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Levamisole Hydrochloride Gel

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by American Cyanamid Co., providing for use of levamisole hydrochloride gel as an anthelmintic for treating breeding swine.

EFFECTIVE DATE: August 15, 1986.

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

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, filed supplemental NADA 126-237 providing for use of levamisole hydrochloride gel as an anthelmintic for treating breeding swine for large roundworms, nodular worms, lungworms, intestinal threadworms, and kidney worms. The sponsor currently holds approval for use of levamisole hydrochloride gel as an anthelmintic for cattle and other levamisole products for treating cattle, sheep, swine, and horses. The supplement is approved and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

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

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 520.1242f is amended by redesignating existing paragraphs (d)(1), (2), and (3) as paragraphs (d)(1)(i), (ii), and (iii), and adding new paragraph (d)(2), redesignating the introductory text of paragraph (d) as paragraph (d)(1) and revising it, to read as follows:

§ 520.1242f Levamisole hydrochloride gel.

* * * * *

(d) *Conditions of use*—(1) *Cattle.* * * *

* * * * *

(2) *Breeding swine*—(i) *Amount.* Eight milligrams per kilogram of body weight (3.6 milligrams per pound) as a single oral dose.

(ii) *Conditions of use.* For treating breeding swine infected with the following nematodes: Large roundworms (*Ascaris suum*), nodular worms (*Oesophagostomum* spp.), lungworms (*Metastrongylus* spp.), intestinal threadworms (*Strongyloides ransomi*), and kidney worms (*Stephanurus dentatus*).

(iii) *Limitations.* May require retreatment in 4 to 5 weeks. Do not use within 11 days of slaughter for food. Consult your veterinarian for assistance before using in severely debilitated animals and in the diagnosis, treatment, and control of parasitism.

Dated: August 8, 1986.

Marvin A. Norcross,

Associate Director, for New Animal Drug Evaluation.

[FR Doc. 86-18408 Filed 8-14-86; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

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

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal, which was published on March 25, 1986 (at 51 FR 10322). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of September 1986.

EFFECTIVE DATE: September 1, 1986.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Corporate Policy and Regulations Department (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.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order

12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: Secs. 4002(b)(3), 4219(c)(1)(D), and 4281(b), Pub. L. 93–406, as amended by sections 403(1) and 104(2) (respectively), Pub. L. 96–364, 94 Stat. 1302, 1237–1238, and 1261 (1980) (29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1)).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_t are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
* * *	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
September 1986	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

Issued at Washington, DC, on this 11th day of August 1986.

Royal S. Dellinger,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86–18490 Filed 8–14–86; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[A-3-FRL-3065-9]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Direct Final Approval of an Administrative Order Issued By the Philadelphia Department of Public Health to Progress Lighting Company

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: EPA is approving an Administrative Order as a Delayed Compliance Order (Order) issued by the Philadelphia Department of Public Health to Progress Lighting Company. The Order requires the Company to bring air emissions from its lighting fixture production facility, located in Philadelphia, Pennsylvania, into compliance with certain regulations contained in the federally approved Pennsylvania State Implementation Plan (SIP) for the control of ozone. Progress Lighting Company will achieve compliance by April 21, 1987 through use of low solvent technology (LST), if possible, and/or through use of add-on controls, should LST prove technically infeasible. Because the Order has been issued to a major source and permits 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 for violations of the SIP regulations covered by the Order. Suits under both the enforcement provisions of section 113 of the Act and the citizen suit provisions of section 304 of the Act are precluded.

DATE: This action will be effective 60 days from the date of publication in the **Federal Register** unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESS: Comments should be submitted to Director, Air Management Division, EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107. The 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 above during normal business hours.

FOR FURTHER INFORMATION CONTACT: Raymond D. Chalmers, Environmental Protection Specialist, Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Telephone: (215) 597–6555.

SUPPLEMENTARY INFORMATION: Progress Lighting Company operates a lighting fixture production facility in Philadelphia, Pennsylvania. The Order under consideration addresses emissions from the facility's surface coating processes, which are subject to regulation under Title 25 of the Pennsylvania Code, § 129.52. This regulation limits the emissions of Volatile Organic Compounds (VOCs), and is part of the federally-approved Pennsylvania State Implementation Plan (SIP) for the control of ozone. The Order requires final compliance with the regulation by April 21, 1987 through the use of low solvent technology (LST), if possible, and/or through the use of add-on controls, should LST prove technically infeasible.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable regulations, it must be approved by EPA before it becomes effective as a Delayed Compliance Order under Section 113(d) of 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 lighting fixture production facility is a major source of VOC emissions. The facility is located in the Metropolitan Philadelphia Interstate 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 the regulations limiting emissions of VOCs codified at § 129.52 of Title 25 of the Pennsylvania Code, part of the federally approved State Implementation Plan, because low solvent coatings are still being developed. The Order requires compliance by April 21, 1987 through use of LST, if possible, and/or through use of add-on controls, should LST prove technically infeasible. The Order includes alternative schedules for achieving compliance. The activities required to achieve compliance through

use of LST are specified in a list of nine separate LST projects, each of which has separate implementation steps and deadlines. The activities required to achieve compliance through use of add-on controls are specified as follows:

Final Engineering Study	Jun. 1, 1986
Purchase Order for Control System	Jun. 15, 1986
Fabrication and Delivery	Feb. 26, 1987
Start-up of Control System	Mar. 31, 1987
Certify for Compliance	Apr. 15, 1987

The Order requires the Company to commit to a specific compliance program by June 15, 1986.

The Order meets the requirements for approval specified in the Clean Air Act (Act) section 113(d), and in 40 CFR Part 65. Prior to issuance of the Order, Philadelphia provided an opportunity for public comment and hearing, as required by section 113(d)(1)(A) of the Act. No public comments or requests for public hearing were received by the City. The Order contains a schedule and timetable for compliance, thus meeting the requirements of section 113(d)(1)(B) of the Act. Compliance is required by April 21, 1987, and is to be achieved by devoloping low VOC coatings and by modifying equipment to enable these coatings to be used, and/or by installing positive control equipment. Schedules for completing the equipment modifications and/or installations are included in the Order; therefore the requirements of section 113(d)(1)(C) of the Act are met. These schedules are as expeditious as practicable, as required by section 113(b)(6). The Order requires Progress Lighting to minimize emissions insofar as possible until final compliance is achieved, to take any measures AMS determines are necessary to avoid any imminent and substantial endangerment to the health of any person, and to comply with current SIP requirements for use of high solids and/or waterborne paint formulas to the extent possible, and thus the Order meets the requirements of Section 113(d)(7) of the Act. The Order specifies a compliance date of April 21, 1987, which is three years after the final compliance date in the Pennsylvania SIP, and thus is acceptable as specified in section 113(d)(1)(D) of the Act. Finally, the Order notifies Progress Lighting Company of its liability for noncompliance penalties under section 120 of the Clean Air Act, as required by section 113(d)(1)(E) of the Act.

If the Order is approved by EPA, source compliance with the terms would preclude suits against the source for violations of the SIP regulations covered by the Order. Suits under both the enforcement provisions of section 113 of the Act and the citizen suit provisions of section 304 would be precluded.

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).

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this Federal Register unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 14, 1986.

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

List of Subjects in 40 CFR Part 65

Air pollution control.

Authority: 42 U.S.C. 7413, 7601.

Dated: August 8, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-18453 Filed 8-14-86; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 261

[SW-FRL 3066-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting final exclusions for the sold wastes generated at three particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261.

EFFECTIVE DATE: August 15, 1986.

ADDRESSES: The public docket for this final rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow at (202) 382-4675 for appointments. The reference number for this docket is "F-86-PSEF-FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424-9346, or (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION: On April 30, 1986, EPA proposed to exclude specific wastes generated by five facilities, including: (1) Plastene Supply Company, located in Portageville, Missouri (see 51 FR 16065); (2) Reynolds Metals Company, located in Sheffield, Alabama (see 51 FR 16066); (3) Universal Oil Products, located in Decatur, Alabama (see 51 FR 16068). These actions were taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their wastes from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioners have also provided information which has enabled the Agency to determine whether any other toxicants are present in the wastes at levels of regulatory concern. The purpose of today's actions is to make final those proposals and to make our decisions effective immediately. More specifically, today's rule allows these three facilities to manage their petitioned wastes as non-hazardous. The exclusions remain in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[1] In

[1] The current exclusions apply only to the processes covered by the original demonstrations. A

Continued

addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's **Federal Register** have been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the wastes for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the waste to be hazardous. These petitioners have demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals, and test data on the four hazardous waste characteristics that their wastes do not exhibit any of the hazardous waste characteristics, and do not contain any other toxicants at levels of regulatory concern.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any States which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[2] To date only one State (Georgia) has received tentative approval for their delisting program. The final exclusions granted today, therefore, are issued under the Federal program. States, however, can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

The exclusion made final here involve the following petitioners:

Plastene Supply Company, Portageville, Missouri;
Reynolds Metals Company, Sheffield, Alabama;
Universal Oil Products, Decatur, Alabama.

I. Plastene Supply Company

A. Proposed Exclusion

Plastene Supply Company (Plastene) has petitioned the Agency to exclude its wastewater treatment sludge (filter press sludge) from EPA Hazardous Waste No. F006, based on the low concentration and immobilization of the listed constituents in the waste. Data submitted by Plastene substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by Plastene indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 16065–16066, April 30, 1986, for a more detailed explanation of why EPA proposed to grant Plastene's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Plastene for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the filter press sludge is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Plastene Supply Company for its dewatered wastewater treatment sludge (filter press sludge) resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, generated at its Portageville, Missouri facility. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[3] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

II. Reynolds Metals Company

A. Proposed Exclusion

Reynolds Metals Company (Reynolds) has petitioned the Agency to exclude its dewatered wastewater treatment sludge (vacuum filtration sludge) from EPA Hazardous Waste No. F019, based on the immobilization of the listed constituents of concern in this waste. Data submitted by Reynolds substantiate their claim that the listed constituents of concern are present in essentially an immobile form. Furthermore, additional data provided by Reynolds indicate that no other hazardous constituents are present in this waste, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 116066–16068, April 30, 1986, for a more detailed explanation of why EPA proposed to grant Reynolds' petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Reynolds for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that this waste is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Reynolds Metals Company for its dewatered wastewater treatment sludge (vacuum filtration sludge) resulting from the chemical conversion coating of aluminum, listed as EPA Hazardous Waste No. F019, generated at its Sheffield, Alabama facility. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[4] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

III. Universal Oil Products

A. Proposed Exclusion

Universal Oil Products (Universal) has petitioned the Agency for a one-time exclusion for its previously generated wastewater treatment sludge contained

facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

[2] RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

[3] The current exclusion applies only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new petition is granted.

[4] See footnote 3.

in two on-site lagoons from EPA Hazardous Waste No. F006, based upon the immobilization of the listed constituents of this waste. Data submitted by Universal substantiate their claim that the listed constituents of concern are either absent or are present in essentially an immobile form. Furthermore, additional data provided by Universal indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that this waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 16068–16070, April 30, 1986, for a more detailed explanation of why EPA proposed to grant Universal's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant a one-time exclusion to Universal Oil for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that this waste is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a one-time final exclusion to Universal Oil Products Company for its previously generated wastewater treatment sludge, which is contained in two on-site lagoons, listed as EPA Hazardous Waste No. F006, and resulting from electroplating operations at its Decatur, Alabama facility.

IV. Effective Date

This rule is effective immediately. Although Subtitle C regulations normally take effect six months after promulgation (RCRA section 3010(b)), the Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation, and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

VII. List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: August 8, 1986.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order to Table 1 to read as follows:

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Plastene Supply Company.	Portageville, Missouri.	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after August 15, 1986.
Reynolds Metals Company.	Portageville, Missouri.	Dewatered wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum after August 15, 1986.
Universal Oil Products.	Decatur, Alabama.	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations and contained in two on-site lagoons on August 15, 1986. This is a one-time exclusion.

[FR Doc. 86–18454 Filed 8–14–86; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 261

[SW-FRL-3066-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting final exclusions for the solid wastes generated at five particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261.

EFFECTIVE DATE: August 15, 1986.

ADDRESSES: The public docket for this final rule is located at U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC, 20460, and is available for public viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475–9327 or Kate Blow at (202) 382–4675 for appointments. The reference number for this docket is "F–86–AREF–FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424–9346, or (202) 382–3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–5096.

SUPPLEMENTARY INFORMATION: On May 7, 1986, EPA proposed to exclude specific wastes generated by several facilities, including: (1) Arco Building Products, located in Sugarcreek, Ohio (see 51 FR 16862); (2) Hanover Wire Cloth Division, located in Hanover, Pennsylvania (see 51 FR 16863); (3) International Minerals and Chemical Corporation, located in Terre Haute, Indiana (see 51 FR 16865); (4) Monsanto Industrial Chemicals Company, located in Sauget, Illinois (see 51 FR 16866); and (5) Square D Company, located in Oxford, Ohio (see 51 16869). These actions were taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their wastes from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioners have also provided information which has enabled the Agency to determine whether any other toxicants are present in the wastes at levels of regulatory concern. The purpose of today's actions is to make final those proposals and to make our decisions effective immediately. More specifically, today's rule allows these five facilities to manage their petitioned wastes as non-hazardous. The exclusions remain in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[1] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's **Federal Register** have been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the wastes for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the waste to be hazardous. These petitioners have demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals, and test data on the four hazardous waste characteristics that their wastes do not exhibit any of the hazardous waste characteristics, and do not contain any other toxicants at levels of regulatory concern.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any State which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[2] To date only one State (Georgia) has received tentative approval for their delisting program. The final exclusions granted today, therefore, are issued under the Federal program. States, however, can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

The exclusions made final here involve the following petitioners:

Arco Building Products, Sugarcreek, Ohio;
Hanover Wire Cloth Division, Hanover, Pennsylvania;
International Minerals and Chemical Corp., Terre Haute, Indiana;
Monsanto Industrial Chemicals Co., Sauget, Illinois;
Square D Company, Oxford, Ohio.

I. Arco Building Products

A. Proposed Exclusion

Arco Building Products (Arco) has petitioned the Agency to exclude its wastewater treatment sludge (filter press sludge) from EPA Hazardous Waste No. F019, based upon the immobilization of the listed constituents in the waste. Data submitted by Arco substantiate their claim that the listed constituents of concern are present in essentially an immobile form. Furthermore, additional data provided by Arco indicate that no other hazardous constituents are present in the waste, and that this waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 16862–16863, May 7, 1986, for a more detailed explanation of why EPA proposed to grant Arco's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Arco for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the waste is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Arco Building Products for its dewatered wastewater treatment sludge (filter press sludge) resulting from the chemical conversion coating of aluminum, listed as EPA Hazardous Waste No. F019, generated at its Sugarcreek, Ohio facility. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[3] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

II. Hanover Wire Cloth Division

A. Proposed Exclusion

Hanover Wire Cloth Division (Hanover) has petitioned the Agency to exclude its wastewater treatment sludge (filter cake) from EPA Hazardous Waste No. F006, based upon the immobilization of the listed constituents in the waste.

[1] The current exclusions apply only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

[2] RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

[3] The current exclusion applies only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new petition is granted.

Data submitted by Hanover substantiate their claim that the listed constituents of concern are essentially present in an immobile form. Furthermore, additional data provided by Hanover indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 16863–16865, May 7, 1986, for a more detailed explanation of why EPA proposed to grant Hanover's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Hanover for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the waste is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Hanover Wire Cloth Division for its dewatered wastewater treatment sludge (filter cake) resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, generated at its Hanover, Pennsylvania facility. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[4] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazard waste.)

III. International Minerals and Chemical Corporation

A. Proposed Exclusion

International Minerals and Chemical Corporation (IMC) has petitioned the Agency to exclude its still bottom waste from EPA Hazardous Waste No. F003, based on the immobilization of the listed constituents of concern in this waste. Data submitted by IMC substantiate their claim that the listed constituents of concern are present in essentially an immobile form. Furthermore, additional data provided by IMC indicate that no other hazardous constituents are present in this waste, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 16865–16866, May 7, 1986, for a more detailed explanation of why EPA proposed to grant IMC's petition.)

B. Agency Response to Public Comments

The Agency received only one comment regarding its decision to grant an exclusion to IMC for the waste identified in its petition. The commenter agreed with the Agency's decision to grant this exclusion.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that this waste is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therfore, is granting a final exclusion to International Minerals and Chemical Corporation for its still bottom residues from its bacitracin production process, listed as EPA Hazardous Waste No. F003, generated at its Terre Haute, Indiana facility. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[5] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

IV. Monsanto Industrial Chemicals Company

A. Proposed Exclusion

Monsanto Industrial Chemicals Company (Monsanto) has petitioned the Agency to exclude its treated brine purification muds from EPA Hazardous Waste No. K071, based upon the low concentration and immobilization of the listed constituents of this waste. Data submitted by Monsanto substantiate their claim that the listed constituents of concern are either not present as levels of regulatory concern or are present in essentially an immobile form. Furthermore, additional data provided by Monsanto indicate that no other hazardous constituents are present in the waste at levels of regulatory concern, and that this waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 16866–16869, May 7, 1986, for a more detailed explanation of why EPA proposed to grant Monsanto's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Monsanto for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that this waste is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Monsanto Industrial Chemicals Company for its brine purification muds, listed as EPA Hazardous Waste No. K071, generated from the mercury cell process in chlorine production at its W.C. Krummich facility, located in Sauget, Illinois. (The notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[6] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

V. Square D Company

A. Proposed Exclusion

The Square D Company (Square D) has petitioned the Agency to exclude its wastewater treatment sludge (filter press sludge) from EPA Hazardous Waste No. F006, based upon the immobilization of the listed constituents in the waste. Data submitted by Square D substantiate their claim that the listed constituents of concern are present in essentially an immobile form. Furthermore, additional data provided by Square D indicate that no other hazardous constituents are present in the waste, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 51 FR 16869–16871, May 7, 1986, for a more detailed explanation of why EPA proposed to grant Square D's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Square D for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that this waste is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to the Square D Company for its dewatered wastewater treatment sludge (filter press sludge) resulting from electroplating operations, listed as EPA Hazardous Waste No. F006, generated at its Oxford, Ohio facility. (the Agency

[4] See footnote 3.

[5] See footnote 3.

[6] See footnote 3.

notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[7] In addition, generators are still obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

VI. Effective Date

This rule is effective immediately. Although Subtitle C regulations normally take effect in months after promulgation (RCRA section 3010(b)), the Hazardous Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation, and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that these rules should be effective immediately. These reasons also provide a basis of making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

VII. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: August 8, 1986.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order to table 1 and table 2 to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Arco Building Products	Sugarcreek, Ohio	Dewatered wastewater treatment sludge (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum after [insert date of this publication].
Hanover Wire Cloth Division	Hanover, Pennsylvania	Dewatered filter cake (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of this publication].
International Minerals and Chemical Corporation.	Terre Haute, Indiana	Spent non-halogenated solvents and still bottoms (EPA Hazardous Waste No. F003) generated from the recovery of n-butyl alchohol after [insert date of this publication].
Square D Company	Oxford, Ohio	Dewatered filter press sludge (EPA Hazardous Waste No. F006) generated from electroplating operations after [insert date of final publication].

TABLE 2—WASTES EXCLUDED FROM SPECIFIC SOURCES

Monsanto Industrial Chemicals Company.	Sauget, Illinois.	Brine purification muds (EPA Hazardous Waste No. K071) generated from the mercury cell process in chlorine production, where separately prepurified brine is not used after [insert date of this publication].

[FR Doc. 86–18455 Filed 8–14–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 11

Claims; Debt Collection Actions

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule deletes § 11.37 concerning quarterly reports to the Director on debt collection actions. This is a management matter which should be handled by internal directives.

EFFECTIVE DATE: August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Aaron Halper, Office of Comptroller, Accounting Division, FEMA, Room 719, 500 C Street, SW., Washington, DC 20472, (202) 646–3708.

SUPPLEMENTARY INFORMATION: Section 11.37 concerns an internal reporting requirement describing material contained in a quarterly report from the Agency Collections Officer (ACO) to the Director. The Comptroller is ACO. This is a matter which should be handled by internal directions. It deals with agency management and thus is not subject to Executive Order 12291, to notice and public comment requirements of the Administrative Procedure Act, and to any requirements concerning environmental assessments. It does not involve any information collection under the Paperwork Reduction Act, nor does it have any impact on small entities. It can be made effective immediately.

List of Subjects in 44 CFR Part 11

Administrative practice and procedure, Claims.

Accordingly, 44 CFR Part 11 is amended as follows:

[7] See footnote 3.

PART 11—CLAIMS

1. The authority citation for Part 11, Subpart C, continues to read as follows:

Authority: 31 U.S.C. 3711 *et seq.*

§ 11.37 [Removed]

2. Section 11.37 is removed and the number reserved.

Julius W. Becton, Jr.,
Director.

[FR Doc. 86-18285 Filed 8-14-86; 8:45 am]
BILLING CODE 6718-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Family Assistance

45 CFR Parts 232 and 233

Aid to Families With Dependent Children and Child Support Enforcement Program; Computing a Supplemental Payment in States Required To Do So by Section 402(a)(28) of the Social Security Act

AGENCY: Family Support Administration and Office of Family Assistance, HHS.

ACTION: Final rule.

SUMMARY: These final regulations implement section 402(a)(28) of the Social Security Act. They provide guidance on how to compute a monthly supplemental payment for AFDC recipients in States required by this statutory provision to pay a supplement.

In July 1975, the Child Support Program began when Congress enacted part D of title IV of the Social Security Act (the Act).

As a result of that new program, child support payments which had been paid directly to the family by an absent parent are paid instead to the State Child Support Enforcement Agency. Section 402(a)(28) of the Act requires that monthly supplemental payments be made to AFDC recipients who have less disposable income now, because of this diversion of support payments, than they would have had in July 1975. States which had a provision in their plan in July 1975 that would have required a supplemental payment, but which have removed that provision, need not provide a supplemental payment.

These regulations affect assistance payments in States which did not, in July 1975, and which do not now, subtract from a family's assistance payment, "dollar-for-dollar", the amount of any income received.

The provision applies in States that (1) use a method for determining the assistance payment in which all or part of the countable income does not effect an equal reduction in the assistance payment, and (2) also employed such a method in July 1975. The method that the State now uses does not have to be the same as the one in effect in July 1975.

EFFECTIVE DATE: This regulation is effective February 11, 1987.

FOR FURTHER INFORMATION CONTACT: Arleen Gahan, Family Support Administration, Office of Family Assistance, Transpoint Building, 2100 Second Street, SW., Washington, DC 20201, telephone (202) 245-2637.

SUPPLEMENTARY INFORMATION:

Timing and Form of Regulations

On February 7, 1980, we published a Notice of Proposed Rulemaking for the Aid to Families with Dependent Children and Child Support Enforcement programs, Computing a Supplemental Payment in States Required to Do So by section 402(a)(28) of the Social Security Act. (See **Federal Register**, Vol. 45, No. 27, February 7, 1980, pages 8316-8323.)

Background

Prior to enactment of title IV-D of the Social Security Act, which established the Child Support Enforcement Program, child support was paid directly to the family or another person or organization designated by the court. When paid to an AFDC family, this support was counted as income in determining need and the amount of the family's assistance payment. In most States it resulted in a corresponding dollar-for-dollar decrease in the assistance payment received by the family.

Some States, however, have used methods to determine the assistance payment which do not cause a full dollar reduction in the assistance payment for each dollar received as income. These States pay less assistance than their full need standard, and some permit recipients to use their own income to make up all or part of the difference between the payment made by the State and the State's standard of need. This additional income retained by the family increases the total amount of disposable income available to the family in a month.

With the enactment of title IV-D, however, all support payments must be paid to the Child Support Enforcement agency (IV-D agency). In States that had allowed families to keep part of their support payments without those payments causing a corresponding reduction in assistance, families had less disposable income because the child support was paid to the IV-D agency.

To remedy this situation, Congress passed section 202 of Pub. L. 94-88. This section amended title IV-A of the Act by adding section 402(a)(28), which provides that:

> In determining the amount of aid to which an eligible family is entitled, any portion of the amounts collected in any particular month as child support pursuant to a plan approved under part D, and retained by the State under section 457, which (under the State plan approved under this part as in effect both during July 1975 and during that particular month) would not have caused a reduction in the amount of aid paid to the family if such amounts had been paid directly to the family, shall be added to the amount of aid otherwise payable to such family under the State plan approved under this part.

The Department interprets this provision to require that families that experience a loss of disposable income, because support payments are made to the IV-D agency, receive a supplemental payment to make up that loss. This interpretation is supported by the report of the House Committee on Ways and Means. The report explains that under the new section 402(a)(28)—

> . . . which is directly related to implementation of the new child support and establishment of paternity program, a State plan would have to provide that, in determining the amount of aid to which a family is entitled, any child support collected and retained by the State pursuant to its child support plan under part D of title IV which would not have caused a reduction in aid had the child support been paid directly to the family will be added to the amount of aid otherwise payable to the family. This new requirement would affect States which provide aid to families with dependent children at a rate which is less than their need standard, but permit child support payments to fill the gap between that standard and the actual payment level (H.R. No. 94-368, 94th Cong. 1st Sess. p. 10, (1975)).

Computing the Supplemental Payment

The supplemental payment for each month *equals* the maximum portion of the support collected on a current month's support obligation less the $50 pass through/disregard and any arrearages collected in that same month that would not make the family ineligible and that would not cause a reduction in the assistance payment if paid directly to the family. It is computed by determining the family's disposable income (including assistance payment and support) two ways, then determining the difference between the two. (Arrearages that are collected from

Federal and State Tax refunds are not included in this computation.)

Examples illustrating computations of the supplemental payment and the total assistance payment using six different State payment methods are in Appendix A to this preamble.

In general, the method of computation is described as follows: In following this method, assume that the $50 pass through/disregard of support has been made.

First, the AFDC assistance payment is computed treating the support as income paid to the family. This yields the amount of assistance the family would get under the State's current payment method, if the family received the support payment (instead of the IV–D agency). Then the family's total disposable income under these circumstances is computed. The total disposable income, for purposes of this regulation, is the sum of the assistance payment and the income which is countable in determining the amount of the assistance payment.

Second, the AFDC assistance payment is computed as it is currently done, i.e., treating the support as assigned to the IV–D agency. Then the family's disposable income under these circumstances is computed.

Third, the supplemental payment is computed as the difference between the disposable income under the two prior computations. The final regulation provides that the supplemental payment may be added to the current AFDC assistance payment to make a new total assistance payment for the month or it may be issued separately.

When the family has countable income from one or more sources in addition to child support, all of that other income must be used to reduce the amount of the assistance payment before support is counted. This serves to minimize the size of the supplemental payment and maximize the amount of other income retained. An example illustrating a computation of the supplemental payment and total assistance payment when there is income from a source other than support is provided in Appendix B to this preamble.

The supplemental payment under section 402(a)(28) is an assistance payment under title IV–A and is, therefore, subject to the same regulatory provisions as all other assistance payments. While the computation of the supplemental payment under 45 CFR 232.21 is separate from the computation of the assistance payment under 45 CFR 233.31, both are computed for the same payment month and based on the same set of circumstances. Both payments are subject to the requirements of 45 CFR 233.20(a)(13) for the adjustment of overpayments and underpayments, rounding requirements under 45 CFR 233.20(a)(2)(iv) and the $10 payment limitation under 45 CFR 233.20(a)(3)(viii)(C) and (D). A payment shall not be made to an assistance unit in any month in which the combination of the supplemental payment and the assistance payment is less than $10. Under 45 CFR 233.20(a)(3)(viii)(D), those individuals who are denied a money payment because of this limitation shall be deemed recipients of aid for all other purposes except participation in the Community Work Experience Program, regardless of whether the supplemental payment and the assistance payment are issued separately or at the same time.

Recipients of supplemental payments under section 402(a)(28) are entitled to timely and adequate notice and an opportunity for a hearing under 45 CFR 205.10.

Federal Matching Funds

The supplemental payment, whether issued separately or as an addition to the current assistance payment, is an AFDC expenditure for which Federal matching funds are available. As such, the State and Federal governments will be reimbursed for the current assistance payment (and the supplemental payment, if issued separately) out of the collections made on the monthly support obligation under 45 CFR 302.51(b)(2). There are several advantages to making the supplemental payment an AFDC payment rather than a payment made by the IV–D agency. First, assistance recipients who receive a supplemental payment will have existing IV–A program protections, such as hearings and notice rights, which do not currently exist in the IV–D program. The State may issue the payments in the way that is efficient for them. The need for extensive data exchange between the IV–A and IV–D agencies in order to compute the payment is minimized.

The Case of Quarles v. St. Clair

In the Notice of Proposed Rulemaking, the regulations provided that when support collected in a month includes an amount which is a payment of *past* support obligations, the maximum portion of the total amount collected that would not cause ineligibility would be used to compute the supplemental payment. This was consistent with the decision of the U.S. District Court for the Northern District of Mississippi in the case of *Quarles* v. *St. Clair*, et al. (U.S.D.C., N.D. Miss., No. GC–77–37–K). In that case, plaintiffs challenged the State's policy of applying section 402(a)(28) of the Act only to payment on the current month's support obligations. Plaintiffs contended that, by not applying section 402(a)(28) requirements to arrearages, the State was not placing the family in the same financial position it would have been in prior to the Child Support Enforcement program.

In deciding the case, the court held that the requirements of section 402(a)(28) of the Act apply to support in excess of the current month's support obligation, but only to the extent the payment would not affect the family's AFDC eligibility if received as income.

On August 12, 1983, the Court of Appeals, 711 F. 2d 691 (5th Cir., 1983), upheld the lower court decision. These final regulations are fully consistent with the decision pertaining to section 402(a)(28).

Examples illustrating computations of the assistance payment when the total support collection for a month exceeds the month's obligation are in Appendix C to this preamble.

Discussion of Comments

On February 7, 1980, these regulations were published in the **Federal Register** as a Notice of Proposed Rulemaking (45 FR 8316) with a 60-day comment period. Comments on the NPRM were received from 12 interested parties. One from the attorney for the plaintiffs in *Quarles* v. *St. Clair* and the remainder from State IV–A and IV–D agencies. A discussion of the substantive comments follows.

Comment: Prior to the publication of the NPRM, State agencies were computing the payment required under 402(a)(28) based on the amount collected on the current month's support obligation, and some were making payments from the IV–D collections. Arrearages were not included in the computation.

Some of the commenters complained that the inclusion of arrearages in the computation of the 402(a)(28) payment would reduce the incentive payments that States are entitled to receive under title IV–D.

Another commenter questioned whether the typical assistance unit would benefit from the use of arrearage payments. He stated that out of his State's entire collection and payment record for one month, only one family with active support received a supplemental payment and that payment was $9.72.

One commenter emphasized that the Department must issue regulations for the treatment of arrearages to prevent a recurrence of the situation that existed in Mississippi prior to the *Quarles* case.

Response: As previously stated in the Preamble to this section, the Department has adopted the opinion in Quarles concerning arrearage payments and has decided to apply it nationally. Accordingly, the largest portion of the arrearage payment (in addition to the amount paid on the monthly support obligation) that would not cause ineligibility must be used in determining the supplemental payment. The amount of arrearages collected must be reported to the IV–A agency by the IV–D agency and included in the computation of the supplemental payment, however, effective with the 1984 Child Support Amendments, incentive payments are based on the total amount of support collected (including arrearages). Therefore, the use of arrearages in the computation of the supplemental payment does not affect the incentive payments to States in any way.

However, Federal tax refund offset amounts must be used first to reimburse the State for assistance payments, pursuant to section 464 of the Social Security Act and section 6402(c) of the Internal Revenue Code. Section 464 of the Social Security Act requires that amounts assigned to the State and collected via Federal tax refund offset must be distributed in accordance with § 457(b)(4) or (d)(3) of the Act. Since this statute was enacted subsequent to section 402(a)(28) of the Act and specifies past-due support collected through intercept of Federal tax refunds is to be used to reimburse past assistance, we have determined that Federal tax refund offset amounts are not applicable to supplemental payments required under section 402(a)(28).

Section 6402(c) of the Internal Revenue Code requires that "a reduction under this subsection shall be applied first to satisfy any past-due support which has been assigned to the State under section 402(a)(26) or 471(a)(17)." Therefore, the IRS will offset amounts which have been assigned to the State before offsetting unassigned past-due support. OCSE policy and regulations follow the distribution order mandated for IRS. OCSE regulations at 45 CFR 303.72(h) requir States to apply offset collections to assigned arrearages first.

Section 466(a)(3) of the Act requires States to have procedures for collecting overdue support owed by the absent parent via State tax refund offset. The statue also requires that overdue support assigned to the State pursuant to section 402(a)(26) or 471(a)(17) of the Act and collected via State tax refund offset must be distributed in accordance with section 457(b)(4) or (d)(3) of the Act. These sections of the Act refer to amounts assigned to the State which are in excess of current support and require that such amounts be used to reimburse the State for past assistance. Therefore, support collected under the State tax refund offset cannot be used in the computation of the supplemental payment under section 402(a)(28).

Comment: Under the proposed regulations, the supplemental payment required under section 402(a)(28) is a IV–A payment. Concerns were expressed that because of this requirement existing computer programs within IV–D would be obsolete, and reprogramming of IV–A systems would be required.

Response: The Department recognizes that many State agencies have already implemented the requirements of section 402(a)(28). In most States, the IV–D agency has been entirely responsible for the 402(a)(28) payment, while in others the IV–D agency computes the supplemental payment, but payment is actually issued by the IV–A agency. We further recognize that changing procedures already in place would entail some costs. In this regard, we fully considered several alternatives, including permitting States to have either the IV–A agency or IV–D agency issue the payment.

We have decided to leave the supplemental payment under section 402(a)(28) as an assistance payment under title IV–A as previously discussed in the preamble under "Computing the Supplemental Payment." However, in order to be responsive to the States' concerns, we have permitted States some flexibility in the procedural aspects of computing and issuing the supplemental payment.

Under the final regulation, a State IV–A agency must be responsible for the computation and issuance of the supplemental payment. As with any IV–A assistance payment, this means that the AFDC State agency is responsible for certifying that the payment is being made to an eligible individual and in a correct amount.

Accordingly, while the IV–A agency may rely on the IV–D agency for the computation of the supplemental payment, such payment will be authorized and issued by the IV–A agency. We rejected the option of permitting States to have the IV–D agency compute and issue the supplemental payment because of the lack of due process mechanisms. The Child Support Enforcement program has neither statutory nor regulatory authority to hold hearings. To require the establishment of such procedures would duplicate procedures already in place under title IV–A and would not be cost effective.

The Department also considered the possibility of permitting States the flexibility of both computing and issuing the supplemental payment through the IV–D agency, but requiring the IV–A agency to take responsiblity for providing hearings under the IV–A State plan. However, since these payments would not be authorized as AFDC payments, they would not be subject to the AFDC regulations governing hearings. The Department believes that the better reading of the statute is that 402(a)(28) payments, like regular assistance payments, should be subject to the notices and hearings provided under 45 CFR 205.10. Therefore, it was determined that the IV–A agency, which has the authority to administer or supervise the administration of the title IV–A plan, including hearings, should be responsible for the issuance of the supplemental payment from title IV–A funds. Moreover, proper and efficient administration of the IV–A plan would be fostered by making the IV–A agency totally responsible for the supplemental payment.

Comment: Several State IV–A agencies expressed concern that the added responsibility of computing and issuing supplemental payments would result in increased quality control errors.

Reponse: We realize that in those States where the supplemental payment under section 402(a)(28) is currently being computed and/or issued by the IV–D agency, there may be potential for an increase in AFDC quality control errors under these regulations. However, we believe that these rules provide the most efficient procedure for issuing the 402(a)(28) supplemental payments. Since both the mechanism for the issuance of assistance payments and the administrative procedures which guarantee due process rights are already in place in the IV–A agency, we believe that the responsibility for the supplemental payment is best placed with the IV–A agency. In addition, in those States where the supplemental payments are currently the responsibility of the IV–D agency, we provide up to 180 days to make the necessary changes. Furthermore, even if these regulations provided that IV–D agencies are required to compute and issue the supplemental payment, some system of monitoring similar to quality control would be required.

Comment: Several State agencies were concerned about the additional burden on AFDC caseworkers who

would be required to compute and issue the supplemental payment.

Response: In response to a prior comment, we explained that the IV–A agency may, if it elects, have the IV–D agency compute the supplemental payment even though the payment must be authorized by the IV–A agency in order to be considered AFDC. This provision could provide some relief for AFDC case workers. However, the commenters are correct in noting that there will be additional responsibilities, such as notices and hearings, which—being an important and necessary part of the IV–A process—cannot be delegated.

Comment: Several State agencies commented that combining the supplemental and the regular assistance payments in one check would cause administrative problems.

Response: We recognize their concern and have revised the final regulation at § 233.21(c) to permit the State agencies to determine the administrative procedure that best meets their needs and structure either by adding the supplemental payment to the regular assistance payment or by issuing it separately. Either way, the 402(a)(28) payment is to be considered a payment under the AFDC program and subject to Federal matching and other relevant AFDC requirements.

Comment: Several commenters made the observation that because of the considerable time lapse since the law was enacted in 1975, it is unreasonable to propose rulemaking which imposes significant and new requirements. In the absence of Federal rulemaking, State agencies were forced to individually develop procedures for issuing the supplemental payments.

Response: Because of the delay in the issuance of final regulations to implement section 402(a)(28) and the fact that affected State agencies have implemented the requirement in a variety of ways, the final regulations provides an effective date of 180 days from the date of publication. This will allow the affected State agencies sufficient time to make the necessary changes and adjustments in implementing section 402(a)(28) of the Act in accordance with these rules.

Comment: One State agency commented that the proposed regulations do not address child support payments not required by court order.

Response: Policy on the "Treatment of Contributions and Support Payments in AFDC Budgeting" was developed jointly by the Office of Family Assistance and the Office of Child Support Enforcement, and issued as Regional Office Directive 79–15, May 31, 1979. The Directive contains policy which provides that voluntary support payments acknowledged—by the mother or father, or absent person making the payments—to be for the purpose of helping to support the child should consider child support. Where voluntary payments meet this criterion of acknowledgement, they are subject to treatment as a child support collection as mandated in 45 CFR 232.20(a)(2) and 233.20(a)(3)(v).

The provisions on computation of the supplemental payment are contained in a new § 232.21.

Conforming and clarifying changes are also made to §§ 232.20 and 233.20.

Summary of Changes From Notice of Proposed Rulemaking

The Notice of Proposed Rulemaking published February 7, 1980 (Vol. 45, No. 27, February 7, 1980, page 8316–8323) provided that States that implemented the $5 disregard of income per month and the conservation of income for future identifiable needs would be required to implement the provisions of section 402(a)(28). These two statutory provisions were eliminated under Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981. Accordingly, the implementing proposed regulations and Appendix C to the preamble have been deleted. (Appendix D in the proposed regulations is now Appendix C.)

Effective October 1, 1984, the supplemental payment under section 402(a)(28) is not computed on the support collected on the montly support obligation. Under section 2640 of Pub. L. 98–369, The Deficit Reduction Act of 1984, the first $50 of support collected on the monthly support obligation will be paid to the family and will not be counted as income or resources in the determination of need and the assistance payment. The supplemental payment will be computed using the balance of support after the disregarded sum and the largest part of the arrearages collected that will not cause ineligibility.

The amendments to § 302.32(b) that were published in the Notice of Proposed Rulemaking are not published in this final regulation. Those amendments set limits on the exchange of information between IV–A and IV–D agencies in States that are required to implement section 402(a)(28). Because there are now several statutory requirements concerning need and assistance computations with support collections under which information must be exchanged between the IV–A and IV–D agencies, we have eliminated procedural requirements. As previously stated in the preamble to the regulations implementing section 2640 of Pub. L. 98–369, the Deficit Reduction Act of 1984, we believe that IV–A and IV–D agencies should consult on the best means of transmitting information required to implement the various provisions where support collections are used in determining eligibility and the amount of assistance.

Minor changes have been made in the preamble, appendices and regulations to include spousal support. Under section 12 of Pub. L. 98–378, the Child Support Enforcement Amendments of 1984, States are required to collect spousal support when it is part of the support order. Spousal support is also subject to the requirement of section 402(a)(28). Therefore, the word, "child", has been deleted to accommodate the statutory change.

Regulatory Procedures

Executive Order 12291

The Department has determined that this final rule is not a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because it will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

(3) Result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Paperwork Reduction Act

These regulations impose no reporting or recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

The Department of Health and Human Services has determined that this final rule will not significantly impact on small business and therefore does not require preparation of Regulatory Flexibility Analysis under the Regulatory Flexibility Act, Pub. L. 96–354.

(Secs. 402(a) (7) and (28) and 1102 of the Social Security Act, as amended; 89 Stat. 434, 49 Stat. 647, as amended; 42 U.S.C. 602(a) (7) and (28) and 1302)

(Catalog of Federal Domestic Assistance Programs, No. 13761, Public Assistance—Maintenance Assistance (State Aid); Program No. 13.679, Child Support Enforcement Program)

List of Subjects

45 CFR Part 232

Aid to families with dependent children, Child support, Child welfare, Family Assistance Office, Grant programs-social programs.

45 CFR Part 233

Aid to families with dependent children, Aliens, Family Assistance Office, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: July 28, 1986.

Wayne A. Stanton,

Administrator, Family Support Administration and Director, Office of Child Support Enforcement.

Approved: July 29, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

Appendix A—Examples of the computation of the total assistance payment using the six methods being implemented by States in July 1975, under which a supplemental payment would have to be determined. The support payment used in these examples is that part remaining after the $50 pass through/disregard.

There were six methods for determining the amount of the assistance payment being implemented by States in July 1975, in which a supplemental payment would have to be determined. These methods are illustrated below:

1. *Income is subtracted from the need standard. The payment is the deficit or the maximum by family size, whichever is less.*

Determine assistance payment:

	Col. A [1]	Col. B [2]
Need standard	$300	$300
Support payment	−100	−0
Deficit	200	300
Maximum by family size	150	150
Assistance payment	150	150

[1] Treat support as income.
[2] Do not treat support as income.

Determine total disposable income:

	Col. A [1]	Col. B [2]
Assistance payment	$150	$150
Support payment	+100	+0
Total	250	150

[1] Treat support as income.
[2] Do not treat support as income.

Determine supplemental payment using total disposable income:

Column A	$250
Column B	−150
Supplemental payment	100

Determine total assistance payment:

Current assistance payment	$150
Supplemental payment	100
Total assistance payment	250

2. *Income is subtracted from the need standard. The payment is a percent of the deficit.*

Determine assistance payment:

	Col. A [1]	Col. B [2]
Need standard	$300	$300
Support payment	−100	−0
Deficit	200	300
Ratable reduction (percent)	×.70	×.70
Assistance payment	140	210

[1] Treat support as income.
[2] Do not treat support as income.

Determine total disposable income:

	Col. A [1]	Col. B [2]
Assistance payment	$140	$210
Support payment	+100	+0
Total	240	210

[1] Treat support as income.
[2] Do not treat support as income.

Determine supplemental payment using total disposable income:

Column A	$240
Column B	−210
Supplemental payment	30

Determine total assistance payment:

Current assistance payment	$210
Supplemental payment	+30
Total assistance payment	240

3. *Income is subtracted from the need standard. The payment is a percent of the deficit or the maximum by family size, whichever is less; or*

4. *Income is subtracted from the need standard. The payment is a percent of the deficit or the maximum on the total money payment, whichever is less.*

Determine assistance payment:

	Col. A [1]	Col. B [2]
Need standard	$300	$300
Support payment	−100	−0
Deficit	200	300
Ratable reduction (percent)	x.70	x.70
Total	140	210
Maximum [3]	150	150
Assistance payment	140	150

[1] Treat support as income.
[2] Do not treat support as income.
[3] Maximum either by family size or on the total money payment.

Determine total disposable income:

	Col. A [1]	Col. B [2]
Assistance payment	$140	$150
Support payment	+100	+0
Total	240	150

[1] Treat support as income.
[2] Do not treat support as income.

Determine supplemental payment using total disposal income:

Column A	$240
Column B	−150
Supplemental payment	90

Determine total assistance payment:

Current assistance payment	$150
Supplemental payment	+90
Total assistance payment	240

5. *Income is subtracted from a reduced need standard. The payment is the deficit or the maximum by family size, whichever is less.*

Determine assistance payment:

	Col. A [1]	Col. B [2]
Need standard	$300	$300
Ratable reduction (percent)	x.70	x.70
Reduced standard	210	210
Support payment	−100	−0
Deficit	110	210
Assistance payment	110	150
Maximum by family size	150	150

[1] Treat support as income.
[2] Do not treat support as income.

Determine total disposable income:

	Col. A [1]	Col. B [2]
Assistance payment	$110	$150
Support payment	+100	+0
Total	210	150

[1] Treat support as income.
[2] Do not treat support as income.

Determine supplemental payment using total disposable income:assistance payment:

Column A	$210
Column B	−150
Supplemental payment	60

Determine total assistance payment:

Current assistance payment	$150
Supplemental payment	+60
Total assistance payment	210

6. *Income is subtracted from a reduced need standard. The payment is the deficit or the maximum on the total money payment, whichever is less.*

Determine assistance payment:

	Col. A [1]	Col. B [2]
Need Standard	$500	$500
Ratable reduction (percent)	×.70	×.70
Reduced Standard	350	350
Support payment	−100	−0
Deficit	250	350
Assistance payment	250	300
Maximum on total money payment	300	300

[1] Treat support as income.
[2] Do not treat support as income.

Determine total disposable income:

	Col. A [1]	Col. B [2]
Assistance payment	$250	$300
Support payment	+100	+0
Total	350	300

[1] Treat support as income.
[2] Do not treat support as income.

Determine supplemental payment using total disposable income:

Column A	$350
Column B	−300
Supplemental payment	50

Determine total assistance payment:

Current assistance payment	$300
Supplemental payment	+50
Total assistance payment	350

Appendix B.—Examples of the computation of the total assistance payment when there is income from another source in addition to the support collection for a given month and a supplemental payment is to be determined.

The support payment used in these examples is that part remaining after the $50 pass through/disregard.

The regulations provide for the counting of support payments when there is income from another source. All income from any other source is always counted before the support payment in computing the supplemental payment.

1. *Income is subtracted from the need standard. The payment is the deficit or the maximum by family size, whichever is less.*

Assume that there is $100 support and $50 countable earned income currently to be treated as income.

Determine assistance payment:

	Col. A [1]	Col. B [2]
Need standard	$300	$300
Countable income: (support −$100 + earnings of $50) =	150	−50
Deficit	150	250
Maximum by family size	150	150
Assistance payment	150	150

[1] Treat support as income.
[2] Do not treat support as income.

Determine total disposable income:

	Col. A [1]	Col. B [2]
Assistance payment	$150	$150
Support payment	+100	+0
Earned income	+50	+50
Total	300	200

[1] Treat support as income.
[2] Do not treat support as income.

Determine supplemental payment using total disposable income:

Column A	$300
Column B	−200
Supplemental payment	100

Determine total assistance payment:

Current assistance payment	$150
Supplemental payment	100
Total assistance payment	250

The recipient will have the same amount of disposable incomes as in Column A—$250 total assistance payment and $50 earned income for $300 total disposable income.

2. In the first example, neither the $100 support payment nor the $50 earned income reduced the amount of the assistance payment. Therefore, the recipient receives a $150 assistance payment and a supplemental payment of $100 for a total assistance payment of $250. The recipient retains the $50 earned income and has total disposable income of $300. An increase in the amount of earned income from $50 to $75 will reduce the amount of the supplement payment, thus:

Determine assistance payment:

	Col. A [1]	Col. B [2]
Need standard	$300	$300
Countable income: (support −$100 + earnings of $75) =	−175	−75
Deficit	125	225
Maximum by family size	150	150
Assistance payment	125	150

[1] Treat support as income.
[2] Do not treat support as income.

Determine total disposable income:

	Col. A [1]	Col. B [2]
Assistance payment	$125	$150
Support payment	+100	+0
Earned income	+75	+75
Total	300	225

[1] Treat support as income.
[2] Do not treat support as income.

Determine supplemental payment using total disposable income:

Column A	$300
Column B	−225
Supplemental payment	75

Determine total assistance payment:

Current assistance payment	$150
Supplement payment	+75
Total assistance payment	255

The recipient will have the same amount of disposable income as in Column A—$225 total assistance payment and $75 earned income for a total of $300 total disposable income.

Appendix C.—Examples of the computation of the total assistance payment when the total support collection for a month includes payment on arrearages.

In computing "the total assistance payment for a month", use the support collected on the current month's support obligation, subtract the $50 pass through/disregard and add the largest part of the total arrearages collected in that same month that will not cause ineligibility. This is "the total support collection."

The instructions are presented in the regulations and provide that when a total support collection for a month includes payment on arrearages, the largest portion of that total collection that would not cause ineligibility if paid to the family shall be used to compute the supplemental payment under section 402(a)(28). The first example illustrates a total support collection for a month (support obligation and payment on arrearages) that would not cause ineligibility. The second example illustrates a total support collection for a month (support obligation and payment on arrearages) that would cause ineligibility. The largest part of this collection that would not cause ineligibility if paid directly to the family is used as countable income.

1. *Income is subtracted from the need standard. The payment is the deficit or the maximum by family size, whichever is less.*

Assume that the support obligation for the month is $200 and that the absent parent paid $50 arrearages. The total support collection for the month is $250.

Determine assistance payment:

	Col. A [1]	Col. B [2]
Need standard	$300	$300
Support payment	[3] 250	−0
Deficit	50	300
Maximum by family size	150	150
Assistance payment	50	150

[1] Treat support as income.
[2] Do not treat support as income.
[3] None of the $250 collection would cause ineligibility if paid directly to the family, therefore, all of it is used to compute the supplemental payment.

Determine total disposable income:

	Col. A [1]	Col. B [2]
Assistance payment	$50	$150
Support payment	+250	+0
Total	300	150

[1] Treat support as income.
[2] Do not treat support as income.

Determine supplemental payment using total disposable income

Column A	$300
Column B	−150
Supplemental payment	150

Determine total assistance payment:

Current assistant payment	$150
Supplemental payment	+150
Total assistance payment	300

2. *Income is subtracted from the need standard. The payment is the deficit or the maximum by family size, whichever is less.*

Assume that the support obligation for the month is $200 and that the absent parent also paid $300 arrearages. The total support collection for the month is $500.

Determine assistance payment:

	Col. A [1]	Col. B [2]
Need standard	$300	$300
Support payment	−[3] 290	−0
Deficit	10	300
Maximum by family size	150	150
Assistance payment	10	150

[1] Treat support as income.
[2] Do not treat support as income.
[3] This is the largest portion of the $500 total support collection for the month that would not cause ineligibility.

Determine total disposable income.

	Col. A [1]	Col. B [2]
Assistance payment	10	$150
Support payment	+290	+0
Total	300	150

[1] Treat support as income.
[2] Do not treat support as income.

Determine supplemental payment using total disposable income:

Column A	$300
Column B	−150
Supplemental payment	150

Determine total assistance payment:

Current assistance payment	$150
Supplemental payment	+150
Total assistance payment	300

3. *Income is subtracted from a reduced need standard. The payment is the deficit or the maximum by family size, whichever is less.*

Assume payment of $200 current support obligation plus $300 in arrearages, for a total of $500.

Determine assistance payment:

	Col. A [1]	Col. B [2]
Need standard	$300	$300
Ratable reduction (percent)	×.70	×.70
Reduced standard	210	210
Support payment	[3] 200	0
Deficit	10	210
Maximum by family size	150	150
Assistance payment	10	150

[1] Treat support as income.
[2] Do not treat support as income.
[3] This is the largest portion of the $500 total child support collection for the month that would cause ineligibility.

Determine total disposable income:

	Col. A [1]	Col. B [2]
Assistance payment	10	$150
Support payment	+200	+0
Total	210	150

[1] Treat support as income.
[2] Do not treat support as income.

Determine supplemental payment using total disposal income:

Column A	$210
Column G	−150
Supplemental payment	60

Determine assistance payment:

Current assistance payment	$150
Supplemental payment	+60
Total assistance payment	210

PART 232—[AMENDED]

Part 232 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 232 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 232.20 is amended by revising paragraph (b)(1) to read as follows:

§ 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV-A Program.

* * * * *

(b) * * *

(1) Upon notification by the IV-D agency of the amount of a support collection, the IV-A agency will use such amount to review eligibility of the assistance unit under section 206.10(a)(9)(ii). This use of these amounts so collected shall not be later than the second month after the month in which the IV-A agency received a report of the monthly collections from the IV-D agency. In determining whether a support collection made by the State's IV-D agency, which represents support amounts for a month as determined pursuant to § 302.51(a) of this title, is sufficient to make the family ineligible for an assistance payment for the month to which the redetermination applies, the State will determine if such collection, when treated as if it were income, makes the family ineligible for an assistance payment. If such treatment makes the family ineligible, the IV-A agency will notify the family and the IV-D agency of the effective date of the family's ineligibility. The IV-D agency will treat the support collection that caused ineligibility in accordance with § 302.32. If such treatment does not make the family ineligible for an assistance payment, the assistance payment will be calculated without regard to such collection except that, when required under § 232.21 supplemental payments must be calculated and issued.

* * * * *

2. A new section 232.21 is added to read as follows:

§ 232.21 Computation of a supplemental payment when there is a support payment.

(a) The purpose of this section is to provide for the computation of a supplemental payment under section 402(a)(28) of the Social Security Act. When used in this section—

"Countable income" means the amount of the recipient's gross income that is used in the computation of the assistance payment after application of all disregards, including work-related expenses.

"Countable support payment" means the support collected on the current month's support obligation less an amount not in excess of the first $50 collected on that obligation. It also

means the excess payments paid to the recipient by the IV–D agency under 45 CFR 302.51(b) (3) and (5).

"Disposable income" means the sum of the assistance payment, and the countable income used in determining the amount of the payment.

"Arrearages" means all collections of past due support exclusive of those made through the Federal and State income tax refund offset.

(b) The State plan must provide that, if the redetermination under § 232.20 indicates that the support payment made on the current month's support obligation would not cause ineligibility, and the State permitted recipients during July 1975 to retain countable income without an equal reduction in their assistance payment, and it currently has such a policy in effect, a supplemental payment will be computed for the current month.

(1) The supplemental payment for a month shall equal the maximum portion of the total support collected in that month which would not reduce the assistance payment if paid directly to the family. In determining this amount, the State agency will—

(i) First consider income from sources other than the support collection; and

(ii) Include in the amount of support collected the maximum amount of any arrearages paid which would not cause ineligibility if paid directly to the family.

(2) The supplemental payment will be computed as follows:

(i) The State IV–A agency determines the assistance payment which would result from treating as income to the family the largest amount of the month's child support collection, including arrearages, that will not cause ineligibility. Using that assistance payment, and using that amount of the support collection as countable income, disposable income is computed.

(ii) The State agency then determines the amount of the assistance payment for which the family would be eligible if there were no support collection. Using that assistance payment, disposable income is again computed.

(iii) The supplemental payment is the amount of disposable income as computed in step (i) less the amount of disposable income as computed in step (ii).

(iv) *Examples*:

Example 1. The State computes the assistance payment by subtracting income from the need standard and pays the deficit or a maximum by family size, whichever is less: (All figures are assumed and do not include income from any other source.)

Step (i): Treating countable support payment as income. Subtract a countable support payment of $100 from a need standard of $300. The deficit is $200. Assume the State's maximum for this family size is $150; therefore, the assistance payment would be $150. The assistance unit would have a $150 assistance payment and the $100 countable support payment for a total disposable income of $250.

Step (ii): Not treating countable support payment as income. There is no income to subtract from the need standard. Thus the assistance payment would be the maximum of $150 for this family size, which would also be the disposable income.

Step (iii): Taking the difference. The supplemental payment is the difference between the disposable income computed under steps (i) and (ii), $250 minus $150, or $100.

Example 2. The State computes the assistance payment by subtracting income from a reduced need standard and pays the deficit or a maximum by family size, whichever is less. Assume a need standard of $400, a ratable reduction of 70%, and a maximum assistance payment of $200. Also assume a $500 total child support collection for the month, $200 of which is the current month's support obligation. The State's minimum payment is $5.

Step (i): Treating countable support payments as income. Determine the largest part of the $500 child support collection which would not cause ineligibility if counted as income to the assistance unit. This would be $279 because the State's reduced need standard is $280 (70% of $400) and any amount of income over $279 would make the family ineligible. The deficit would be $1. The assistance unit would not receive an assistance payment, however, they would have the $279 support payment as disposable income. No assistance payment is made but the family remains eligible under § 233.20(a)(3)(viii) (C) and (D).

Step (ii): Not treating countable support payment as income. There is no income to subtract from the reduced need standard, thus the assistance payment would be the maximum of $200 for this family size, which would also be the disposable income.

Step (iii): Taking the difference. The supplemental payment is the difference between the disposal incomes computed under steps (i) and (ii), $280 minus $200, or $80.

(c) A supplemental payment under this section may either be added to the assistance payment for which the unit is otherwise eligible, to make a new total assistance payment for the month or be issued separately. In the examples in paragraph (b)(2)(iv) of this section, the new total assistance payments would be $250 ($150 plus $100) in Example 1, and $280 ($200 plus $80) in Example 2.

PART 233—[AMENDED]

Part 233 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 233 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42) U.S.C. 1302.

2. Section 233.20 is amended by revising paragraph (a)(3)(v) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(3) * * *

(v) Provide that agency policies will assure that:

(A) In determining eligibility for an assistance payment, support payments assigned under § 232.11 of this chapter will be treated in accordance with § 232.20 and § 232.21 of this chapter; and

(B) In determining the amount of an assistance payment, assigned support payments retained in violation of § 232.12(b)(4) of this chapter, will be counted as income to meet need unless the approved IV–A State plan provides that such support payments are subject to IV–D recovery under §§ 302.31(a)(3) and 303.80 of this title or unless such payments are sufficient to render the family ineligible as provided at § 232.20 of this chapter

* * * * *

[FR Doc. 86–17882 Filed 8–14–86; 8:45 am]
BILLING CODE 4190–11–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 85–26]

Common Carrier Services; Replacing Structural Separation With Nonstructural Safeguard for AT&T's Provision of Customer Premises Equipment

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order on reconsideration.

SUMMARY: The Commission has denied in principal part petitions for reconsideration of the *AT&T Structural Relief Order* because it concluded that its decisions to remove the structural separation requirements from AT&T's CPE operations and to establish nonstructural safeguards are fundamentally sound and not in need of major revision. The Commission, however, has made cert clarifications and modifications to that Order in light of concerns raised by the parties in the reconsideration proceeding.

FOR FURTHER INFORMATION CONTACT: Melanie Haratunian, Policy and Program

Planning Division, on Carrier Bureau, (202) 632–4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration, CC Docket 85–26, adopted July 31, 1986 and released August 7, 1986.

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

Summary of Memorandum Opinion and Order on Reconsideration

1. On September 30, 1985, the Federal Communications Commission ("FCC" or "Commission") released the *AT&T Structural Relief Order*, CC Docket 85–26 (50 FR 40379; October 3, 1985), which enabled the American Telephone and Telegraph Company ("AT&T") to provide customer premises equipment ("CPE") free of the structural separation requirements established in the *Second Computer Inquiry* (77 FCC 2d 384; 84 FCC 2d 50; 88 FCC 2d 512; 693 F 2d 198; FCC 84–190). The Commission also imposed four kinds of nonstructural requirements to limit the potential for AT&T to engage in anticompetitive conduct in providing CPE on an unseparated basis. The FCC required AT&T: (1) To adhere to a modified version of the Commission's network disclosure rules; (2) to refr from discriminating in favor of CPE customers in providing network services; (3) at the customer's request, to disclose its customer proprietary network information ("CPNI") to non-AT&T CPE vendors and/or to withhold such CPNI from AT&T CPE personnel; and (4) to establish accounting procedures for the proper allocation of joint and common costs between AT&T's regulated network services and its unregulated CPE activities. To ensure effective implementation of those safeguards, AT&T also was required to file plans describing its implementation of the nondiscrimination, CPNI, and accounting safeguards and to submit monthly reports documenting that the intervals for the installation and maintenance of its network services were not affected by a customer's brand of CPE. Eight parties filed for reconsideration of various aspects of the *AT&T Structural Relief Order*.

2. In the *Memorandum Opinion and Order on Reconsideration*, the Commission concluded that its decisions to remove the structural separation requirements from AT&T's CPE operations and to establish nonstructural safeguards are fundamentally sound and not in need of major revision. The FCC, however, did clarify or modify three of the nonstructural safeguards.

3. First, the Commission modified its network disclosure safeguards by requiring AT&T to disclose to the public technical information about new or changed network services 12, rather than 6, months prior to the introduction of the service. In addition, the FCC clarified that AT&T should disclose newly discovered information about its operational network services and should disclose information to entities engaged in the leasing of CPE.

4. Second, the Commission clarified that its nondiscrimination concerns include the quality of network services and accordingly required AT&T to amend its nondiscrimination plan to describe with particularity its procedures for ensuring that such discrimination in service quality does not occur. The Commission also required AT&T to obtain an annual independent audit to ensure that those procedures are followed.

5. Third, the FCC modified its CPNI safeguards to require AT&T to notify its WATS and private line customers of the Commission's rules on CPNI through a one-time insert in their network services bills.

6. In addition, pursuant to the nondiscrimination guidelines of the *AT&T Structural Relief Order*, the Commission required that if AT&T provides joint installation and maintenance services for its CPE and transmission circuits, it must coordinate with independent CPE vendors to make those joint services available for independent CPE and AT&T's transmission circuits.

Ordering Clause

7. Accordingly, it is ordered, that pursuant to 47 U.S.C. 154 (i) and (j), 201, 202, 203, 205, 218, and 403, and 5 U.S.C. 553, the Petitions for Reconsideration filed in this proceeding are denied except as provided herein.

William J. Tricarico,

Secretary.

[FR Doc. 86–18410 Filed 8–14–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 223, 228, 242 and 252

Department of Defense Federal Acquisition Regulation Supplement; Safety Precautions for Ammunition and Explosives

Correction.

In FR Doc. 86–18193 beginning on page 28943 in the issue of Wednesday, August 13, 1986, make the following correction:

On page 28943, in the second column in the **DATE** caption, insert "Effective August 1, 1986." before "Comments . . .".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-209]

Organization and Delegation of Powers and Duties; Assistant Secretary for Administration

AGENCY: Department of Transportation, (DOT).

ACTION: Final rule.

SUMMARY: This amendment revises, adds and updates delegations to the Assistant Secretary for Administration.

EFFECTIVE DATE: August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn, Office of the General Counsel, Department of Transportation, Washington, DC, (202) 366–9307.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register**.

The Secretary has determined that the existing delegations to the Assistant Secretary for Administration need to be updated to eliminate obsolete delegations and references, add others for new statutes and regulations, and revise existing delegations.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

PART 1—[AMENDED]

1. The authority of Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. In consideration of the foregoing, § 1.22 of Part 1 of Title 49, Code of Federal Regulations, is amended by revising paragraph (f) to read as follows:

§ 1.22 Structure.

* * * * *

(f) *Office of the Assistant Secretary for Administration.* This Office is composed of the Offices of Personnel; Management Planning; Information Resource Management; Administrative Services and Property Management; Hearings; Acquisition and Grant Management; Security; and Financial Management.

* * * * *

3. In consideration of the foregoing, § 1.23 of Part 1 of Title 49, Code of Federal Regulations, is amended by revising paragraph (f) to read as follows:

§1.23 Spheres of primary responsibility.

* * * * *

(f) *Assistant Secretary for Administration.* Organization; delegations of authority; personnel ceiling control; management studies; personnel management; acquisition and grant management (except for the responsibility listed for the Office of Small and Disadvantaged Business Utilization in this section); information resource management; financial management; property management; paperwork management; management information; security; computer support; telecommunications; and administrative support services for the Office of the Secretary and certain other components of the Department.

* * * * *

4. In consideration of the foregoing, § 1.44 of Part 1 of Title 49, Code of Federal Regulations, is amended by adding paragraph (r) to read as follows:

§ 1.44 Reservation of authority.

* * * * *

(r) *Approval of Cash Purchases of Passenger Transportation.* The authority under FPMR G–72, as amended, to authorize and approve cash purchases for emergency passenger transportation services costing more than $100.

5. In consideration of the foregoing, § 1.59 of Part 1 of Title 49, Code of Federal Regulations, is amended by revising the heading of paragraph (a), revising paragraphs (b)(1) through (b)(3), (b)(6), (c)(1) through (c)(3) introductory text, (c)(5) and (c)(7) through (c)(9), adding paragraphs (c)(10) through (c)(13), revising paragraphs (h) through (n) and adding paragraph (o) to read as follows:

§ 1.59 Delegations to the Assistant Secretary for Administration.

The Assistant Secretary for Administration is delegated authority for the following:

(a) Acquisition. * * *

(b) Personnel.

(1) Conduct a personnel management program for the Office of the Secretary with authority to take, direct others to take, recommend or approve any personnel action with respect to such authority.

(2) Develop and implement an affirmative action plan in the Office of the Secretary to assure equal employment opportunity.

(3) Serve as Vice Chairman of the Departmental Executive Resources Board and its Executive Resources Review Committee.

* * * * *

(6) Approve employment of experts and consultants in accordance with 5 U.S.C. 3109.

* * * * *

(c) *Finance.* (1) Administer the financial and fiscal affairs of the Office of the Secretary (other than those for which the Assistant Secretary for Budget and Programs is responsible), in accordance with 31 U.S.C. 3512.

(2) Designate to the Treasury Department certifying officers and designated agents for the Office of the Secretary and imprest fund cashiers for the Departmental headquarters. (Redelegation to the Director of Financial Management is contained in Subpart E, § 1.59A.)

(3) In accordance with 31 U.S.C. 3527, grant or recommend relief from accountability for losses or deficiencies of disbursing officers, cashiers, or other accountable officers as follows:

* * * * *

(5) Waive claims and make refunds in connection with claims for erroneous overpayment of pay and allowances to an employee of the Office of the Secretary in the amounts aggregating not more than $500 without regard to any repayments, and deny requests for waiver of such claims regardless of the aggregate amount of the claim, as provided by 4 CFR Parts 91, 92, and 93. This authority may be redelegated only to the Director of Financial Management.

* * * * *

(7) Determine the existence and amount of indebtedness and the method of collecting repayments from employees of the Office of the Secretary and collect repayments accordingly, as provided by 5 U.S.C. 5514. This authority may be redelegated only to the Director of Financial Management.

(8) Sign Budget Execution reports required by OMB Circular A–34, for the Office of the Secretary. (Redelegation to the Director of Financial Management is contained in subpart E, § 1.59A.)

(9) Review and approve for payment any voucher for $25 or less the authority for payment of which is questioned by a certifying or disbursing officer. (Redelegation to the Director of Financial Management is contained in subpart D, § 1.59A.)

(10) Approve cash purchases of emergency passenger transportation services costing over $100 under FPMR G–72, as amended.

(11) Perform accounting and related functions in support of the essential air service program.

(12) Carry out the functions and obligations assigned to the Secretary with respect to the Prompt Payment Act, Pub. L. 97–177.

(13) Carry out the functions and duties assigned to the Secretary with respect to the Debt Collection Act of 1982, Pub. L. 97–365.

* * * * *

(h) *Foreign Travel.* Review written requests for modification to the Department's foreign travel plan approved by the Office of Management and Budget.

(i) *Gifts and Bequests.* Carry out the functions vested in the Secretary by section 9(m) of the Department of Transportation Act (Pub. L. 89–670).

(j) *Equal Employment Opportunity.* Exercise the authority of the Secretary to accept or reject internal complaints of discrimination on the basis of race, color, religion, sex, national origin, or age arising within or relating to the Office of the Secretary.

(k) *Building Management.* Carry out the functions vested in the Secretary by sections 1(b) and 4(b) (as appropriate) of Executive Order 11912.

(l) *Privacy.* Issue notices of Department of Transportation systems of records as required by the Privacy Act of 1974 (5 U.S.C. 552a(e)(4), (11)).

(m) *Hearings.* Provide logistical and administrative support to the Department's Office of Hearings.

(n) *Paperwork Reduction.* Carry out the functions and responsibilities assigned to the Secretary with respect to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

(o) *Federal Real Property Management.* Carry out the functions assigned to the Secretary with respect to Executive Order 12512 of April 28, 1985.

* * * * *

6. In consideration of the foregoing, Part 1 of Title 49, Code of Federal

Regulations, is amended by adding § 1.59a to read as follows:

§ 1.59a Redelegations by the Assistant Secretary for Administration.

(a) The Assistant Secretary for Administration has redelegated to the Director of Acquisition and Grant Management authority to procure and authorize payment for property and services for the Office of the Secretary, with power to redelegate and authorize successive redelegations.

(b) The Assistant Secretary for Administration has redelegated to the Director of Personnel authority to:

(1) Conduct a personnel management program for the Office of the Secretary with authority to take, direct others to take, recommend or approve any personnel action with respect to such authority.

(2) Develop, coordinate, and issue wage schedules for Department employees under the Federal Wage System, except as delegated to the Commandant of the Coast Guard at § 1.46 of this part.

(c) The Assistant Secretary for Administration has redelegated to the Director of Financial Management authority to:

(1) Designate to the Treasury Department certifying officers and designated agents for the Office of the Secretary and imprest fund cashiers for the Departmental Headquarters.

(2) Certify to the validity of obligations as required by 31 U.S.C. 200 and to the adequacy of bond coverage for the designations under section 160(c)(2).

(3) Sign reports on Budget Execution as required by OMB Circular A-34 (Revised).

(4) Review and approve for payment any voucher for $25 or less the authority for payment of which is questioned by a certifying or disbursing officer.

(5) Process essential air service payments.

Appendix A—[Amended]

6. In consideration of the foregoing, paragraph 4 "Chief, Accounting Operations Center" of Appendix A removed and paragraph 5 redesignated paragraph "4".

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

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 86-17609 Filed 8-14-86; 8:45 am]

BILLING CODE 4910-62-M

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-210]

Organization and Delegation of Powers and Duties; Operating Administrations, etc.

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Final rule.

SUMMARY: This amendment delegates to the Administrators of the Operating Administrations and to the Assistant Secretary for Administration certain responsibilities of the Secretary under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Uniform Act) and under the Department regulation found at 49 CFR 25 governing implementation of the Uniform Act.

EFFECTIVE DATE: August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Samuel E. Whitehorn, Office of the General Counsel, Department of Transportation, Washington, DC, (202) 366-9307.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the **Federal Register.**

The Secretary has determined that certain authority: concerning the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 should be delegated to the Operating Administrations and the Assistant Secretary for Administration. By Presidential Memorandum (50 FR 8953, March 5, 1985), the Department was designated the lead agency to coordinate administration and implementation of the Uniform Act. This delegation redelegates that authority to the Federal Highway Administrator.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

PART 1—[AMENDED]

1. The authority of Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. In consideration of the foregoing, § 1.45 of Part 1 of Title 49, Code of Federal Regulations, is amended by revising paragraphs (a)(9) and (a)(12), and adding paragraphs (c), (d), and (e) to read as follows:

§ 1.45 Delegation to all administrators.

(a) Except as prescribed by the Secretary of Transportation, each Administrator is authorized to:

* * * * *

(9) Settle and pay claims by employees for personal property losses as provided by 31 U.S.C. 3721. This authority may be redelegated only to Office Directors, Regional Directors, District Commanders, or other comparable levels and to those individuals that report to the above officials.

* * * * *

(12) Authorize and approve official non-foreign travel and transportation for themselves, their subordinates, and others performing services for, or in cooperation with, their operating administrations. Additionally, heads of operating administrations, through a redelegation from the Deputy Secretary, may authorize and approve routine operational foreign travel, as defined in DOT 1500.6A, Travel Manual, of 1-2-85. These authorities may be redelegated in accordance with regulations issued by the Assistant Secretary for Administration.

* * * * *

(c) Except as provided in §§ 1.48 and 1.59 and 49 CFR 25.302, the functions, powers, and duties of the Secretary of Transportation, with respect to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, Pub. L. 91-646, 84 Stat. 1984, are delegated to:

(1) The head of each of the following Operating Administrations with respect to programs administered by their respective organizations:

(i) U.S. Coast Guard;

(ii) Federal Aviation Administration;

(iii) Federal Highway Administration;

(iv) Federal Railroad Administration;

(v) Urban Mass Transportation Administration;

(vi) National Highway Traffic Safety Administration;

(vii) St. Lawrence Seaway Development Corporation; and

(viii) Maritime Administration.

(2) [Reserved]

(d) Each office to whom authority is delegated by either § 1.45(c) or § 1.59(p) may redelegate and authorize successive redelegations of that authority within the organization under the Administrators' or Assistant Secretary for Administration's jurisdiction.

(e) Each office to whom authority is delegated by either § 1.45(c) or § 1.59(p) may prescribe additional procedures, requirements and regulations that are appropriate to the particular programs

administered by the preparing official's organization, provided:

(1) Any such additional guidance is not inconsistent with the Act, 49 CFR Party 25 or Subpart C of this manual;

(2) Any such additional guidance is approved prior to issuance by the Federal government's designated lead agency, the Federal Highway Administration (designated the Federal government's lead agency through the President's Memorandum issued February 27, 1985, and § 1.48(ee)), in coordination with the Assistant Secretary for Policy and International Affairs.

3. In consideration of the foregoing § 1.48 of Part 1, Title 49. Code of Federal Regulations, is amended by adding paragraphs (cc), (dd) and (ee) to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

* * * * *

(cc) Establish and maintain a schedule of moving expense allowances applicable to individuals and families displaced under Pub. L. 91–646, 84 Stat. 1894. The schedule shall cover each State, be based on current local moving costs, and not exceed the statutory maximum.

(dd) Prescribe common regulations as necessary to implement Pub. L. 91–646, 84 Stat. 1894, and any amendments thereto, and revise Part 25 of this title, as appropriate, in coordination with the Assistant Secretary for Policy and International Affairs.

(ee) Carry out the functions vested in the Secretary by sections 2 and 3 of the February 27, 1985 Presidential Memorandum for the heads of Executive Departments and Agencies.

4. In consideration of the foregoing, § 1.59 of Part 1 of Title 49, Code of Federal Regulations, is amended by adding paragraph (p) to read as follows:

§ 1.59 Delegations to Assistant Secretary for Administration.

* * * * *

(p) *The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894.* Except as provided in §§ 1.45, 1.48 and 49 CFR 25.302. the functions, powers, and duties of the Secretary of Transportation, with respect to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, are delegated to the Assistant Secretary for Administration with respect to programs administered by the Office of the Secretary. This authority is subject to the requirements listed in § 1.45 that govern all Operating Administrations' authority with respect to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Issued in Washington, DC, on June 24, 1986.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 86–15945 Filed 8–14–86; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 60477–6077]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustments and request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces revised harvest quotas for chinook and coho salmon in the recreational fisheries from Klipsan Beach, Washington, to the U.S.-Canada border. This action is necessary to prolong the fishery and to increase the opportunities for the recreational fishery to harvest its ocean quotas of chinook and coho salmon. It is intended to allow maximum harvest of ocean salmon from the quotas established for the 1986 season.

DATES: The revised recreational quotas for chinook and coho salmon north of Klipsan Beach, Washington, are effective at midnight, Pacific Daylight Time, August 12, 1986. Comments on this notice will be received until August 26, 1986.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way, NE., Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206–526–6150.

SUPPLEMENTARY INFORMATION: The ocean salmon fisheries off Washington, Oregon, and California are managed under a framework fishery management plan (50 CFR Part 661). The framework regulations were modified by an emergency rule (51 FR 18451, May 20, 1986) which, among other things, established inseason management provisions for the 1986 season.

The emergency rule authorizes inseason adjustments to management measures if the adjustments are consistent with fishery regimes established by the U.S.-Canada Pacific Salmon Commission, ocean escapement goals, conservation of the salmon resource, any adjudicated treaty Indian fishing rights, and the ocean allocation schemes in the framework amendment (49 FR 43679, October 31, 1984). In addition, all inseason adjustments must be based on consideration of the following factors: Predicted sizes of salmon runs; harvest quotas and hooking mortality limits for the area and total allowable impact limitations if applicable; amount of recreational, commercial and treaty Indian catch for each species in the area to date; amount of recreational, commercial, and treaty Indian fishing effort in the area to date; estimated average daily catch per fisherman; predicted fishing effort for the area to the end of the scheduled season; and other factors as appropriate.

The all-species recreational ocean salmon fisheries north of Klipsan Beach, Washington, opened on June 29, 1986. The allowable harvest of chinook and coho salmon was divided into two subareas as indicated below with separate quotas for each subarea. The subarea quotas as modified by previous inseason action (51 FR 26900, July 28, 1986) are as follows:

Subarea	Revised Chinook quota	Revised Coho quota
U.S.-Canada Border to Queets River	3,300	25,000
Queets River to Klipsan Beach	22,100	79,300
Totals	25,400	104,300

In the subarea from the U.S.-Canada border to the Queets River (northern area), 2,824 chinook (86 percent of quota) and 11,807 coho (47 percent of quota) had been harvested through August 3, 1986. At current fishing rates, the fishery would close on attainment of its chinook quota, leaving approximately 10,000 coho unharvested.

In the subarea from Queets River to Klipsan Beach (southern area), 8,399 chinook (38 percent of quota) and 52,742 coho (67 percent of quota) had been harvested through August 3, 1986. At current fishing rates, the fishery would close on attainment of its coho quota, leaving approximately 4,800 chinook unharvested.

Representatives of the recreational fisheries have agreed to an exchange of chinook and coho salmon between areas

to increase the likelihood that the quotas of both species in both subareas would be harvested.

The Secretary has determined that such an exchange is consistent with the criteria in the emergency rule. After consideration of the facts listed above and in consultation with the Assistant Director of the Washington Department of Fisheries (WDF) and the Chairman of the Pacific Fishery Management Council, the Secretary therefore issues this notice to modify subarea quotas north of Klipsan Beach as follows:

Subarea	Revised Chinook quota	Revised Coho quota
U.S.-Canada Border to Queets River	4,100 (+800)	22,600 (−2,400)
Queets River to Klipsan Beach	21,300 (−800)	81,700 (+2,400)
Totals	25,400	104,300

This notice does not apply to other salmon fisheries which may be operating in other areas nor to other fisheries in the same area.

The Assistant Director of WDF has confirmed that Washington will manage the ocean recreational fisheries in State waters adjacent to this area of the fishery conservation zone in accordance with the revised quotas.

Other Matters

This notice is provided under 50 CFR 661.23 is in compliance with Executive Order 12291.

List of Subject in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: August 12, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-18468 Filed 8-12-86; 2:27 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 158
Friday, August 15, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 235, 250, 252, and 255

State Administative Expense Funds, Food Distribution Progam and National Inventory System

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would create a National Inventory System (NIS) for processing surplus commodities which would replace the current processing systems operated by some States and the National Commodity Processing (NCP) Program that is operated by the Food and Nutrition Service (FNS). The current legislation mandates that the NCP Program expire on June 30, 1987. Under this proposed regulation, donated food available through NIS will be designated by the Secretary of Agriculture. Donated food not available through NIS may continue to be processed pursuant to State processing agreements. However, States will be permitted to secure processing of NIS-type donated food only through NIS or through intrastate processors (Part 250) which do not participate in NIS. Under the NIS Program, FNS would approve a federal agreement with qualified processors in which yield requirements and assigned values for donated food will be established. The federal agreement will also establish all systems which may be used by an NIS processor to pass through the value of donated food to eligible recipient agencies. A processor will receive all donated food to be used in the NIS from FNS and would be required to post one bond with FNS to cover the value of the NIS donated food. A master list of processed end products, with child nutrition (CN) label information if applicable, will also be approved by FNS.

Under the proposed rule, States may elect to participate in NIS. Upon FNS approval of a processor's federal agreement, States will then enter into State agreements with NIS processors. These State agreements would further specify what end products a processor will sell within that State and the value pass through system(s) to be used. States may require that processed products carry an approved CN Label. States will be responsible for disseminating a list of processors with whom the State has an agreement and approved end products available within the State to all eligible recipient agencies. States will also be responsible for providing recipient agency information to approved processors. Each NIS processor will be required to submit monthly reports to States reflecting the sale and delivery of end products during each month. States will be required to report to FNS the amount of donated food used in products sold to eligible recipient agencies.

DATES: To be assured of consideration, comments *must* be received by November 13, 1986.

ADDRESS: Comments should be sent to Ms. Susan Proden, Chief, Special Operations Branch, Nutrition and Technical Services Division, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302. All written submissions will be available for inspection in Room 413, 3101 Park Center Drive, Alexandria, Virginia 22302 during regular business hours (8:30 am to 5:00 pm) Monday thru Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Proden, Chief, Special Operations Branch, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3888.

SUPPLEMENTARY INFORMATION: Under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), information collection requirements contained in §§ 255.4, 255.5, and 255.6 of this proposed rule have been approved by the Office of Management and Budget (OMB #0584–0325) through August 31, 1988.

Classification

This action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an impact on the economy of more than $100 million. No major increase in costs or prices for program participants, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. The action is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.550. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This action has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. Robert E. Leard, Administrator of the FNS, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This action will ensure the availability of processed surplus commodities to eligible recipient agencies. The eligible recipient agencies include all outlets eligible for commodities under Parts 250 and 251.

Background

On June 23, 1983, the Department published interim regulations establishing the framework for the National Commodity Processing (NCP) Program, in part to satisfy the dictates of section 203 of the Temporary Emergency Food Assistance Act (TEFFA) (7 U.S.C. 612c *note*) which directed the Secretary to encourage the consumption of surplus commodities. Under the NCP Program, commodities made available without charge or credit under nutrition programs administered by the Secretary of Agriculture were made available in processed form to eligible recipient agencies through processing agreements with private companies. At the end of the two-year program, the Department decided to discontinue the NCP Program because of its failure to meet stated goals. Specifically, NCP products sales has been much lower than anticipated and had displaced, rather than built on, State sales activities. Consequently, the federal cost of administering the NCP

Program had greatly exceeded any savings realized from reduced storage costs of surplus commodities. In addition, recipient agency registration had been concentrated geographically and by recipient agency outlet type. Moreover, NCP sales had been concentrated among a small number of processors, schools and States. Finally, sales verification tests had indicated a general lack of accountability throughout NCP Program. NCP was designed to complement State processing activities. Instead, many States had discontinued or reduced their processing activities as NCP had expanded. Many States had placed restrictions on recipient agency eligibility, processor eligibility, and the number of processors and end products sold. These shortcomings of NCP continue to exist.

On May 3, 1985, the Department published a Notice (50 FR 19993) announcing that the NCP Program would end on June 30, 1985, because the NCP Program had not achieved its stated goals. Pursuant to Title I of Pub. L. 99–98, Congress reauthorized section 203 of the Temporary Emergency Food Assistance Act of 1983 through June 30, 1986. The Department decided to satisfy this directive by reauthorizing the NCP Program for one additional year. FNS published an interim rule on September 12, 1985, to amend the June 23, 1983 rule. Subsequently, the Food Security Act of 1985 (Pub. L. 99–198), as amended, reauthorized section 203 of the TEFAA until June 30, 1987. Therefore, the NCP Program has been extended until June 30, 1987.

Purpose of the NIS System

Since the NCP Program will expire on June 30, 1987, the Department proposes to implement the National Inventory System (NIS) to replace NCP on July 1, 1987. The NIS establishes a uniform system for processors to sell certain donated food products nationwide. The Department believes that the NIS proposal places the burdens of administration at the levels best suited and equipped to handle the various responsibilities. Through NIS, processed end products will be made available to all eligible recipient agencies. These regulations propose permitting FNS to enter directly into processing agreements with processors to convert donated food designated by the Secretary into various end products. Under these agreements, processors are permitted to enter into State agreements to market such end products to any recipient agency in the State eligible to receive the donated food. By extablishing the NIS, the Department believes there will be an increase in the number of recipient agencies receiving the benefits of commodity assistance through processing agreements since States are in a better position than FNS to furnish processor information more expeditiously to all recipient agencies. NIS would, therefore, estabish a nationwide system of donated food distribution. This will provide more eligible recipient agencies access to more available end products. In addition, NIS will reduce a great deal of duplicative administrative efforts between the current State processing programs and the NCP Program. Consequently, the overall cost of administration should be reduced. Along with a reduction in actual costs, an NIS Program would similarly reduce the variances among States in policy, procedures and forms which have placed unnecessary administrative burden on the processing industry.

Applicability of Current Provisions.

Many of the current provisions of 7 CFR Part 250 will be applicable to NIS food processors. To the extent that the current provisions are applicable, the proposed Part 255 cross-references or restates them.

Operation of the Program

Under NIS, FNS proposes to enter into federal agreements with processors. Any food processor who can manufacture donated food into a finished product and sell that product to eligible recipient agencies is eligible to apply for approval. FNS will review applications of the basis of factors such as financial responsibility, past performance under State and NCP agreements, the ability of the applicant to meet the requirements of the regulations and the agreement with FNS, the ability of the applicant to distribute processed products to eligible recipient agencies, and a satisfactory record of integrity, good business ethics and performance (§ 255.4(b)). Upon FNS approval, States electing to participate in NIS may then enter into State agreements with the processor, allowing those processors to sell NIS end products to any eligible recipient agencies within the State (§ 255.4(d)).

States will specify the type of end products which may be sold, stipulate any Child Nutrition (CN) labeling requirements for end products covered under 7 CFR Part 210, 220, 225 and 226, Appendix C for sale in the State and designate the donated food value return system(s) which may be used within the State § 255.4(d)). Any requirements imposed by the State must apply to all processors approved to sell NIS end products within the State. States may also require approved processors to make end products available to all eligible recipient agencies within the State.

Food processors may request and receive reasonable quantities of NIS donated food based on their ability to sell end products containing the donated food. With FNS approval, processors may substitue commercially purchased food of equal or better grade which they acquire on the open market for donated food. Substitution will only be approved in the case of commingling of donated food and commercial food or when delays in donated food shipments adversely affect production (§ 255.4(b)(5)). Except in the instance of substitution, processors are prohibited from disposing of any donated food directly in commercial channels. Food processors are required to keep adequate records of their activities in order to show at all times the status of the donated food they have received (§ 255.4(b)(9)).

The distribution of donated food will be performed by transfer of title to the commodities from the Commodity Credit Corporation (CCC) to FNS and shipment of the commodities to participating food processors. FNS is designated as the distributing agency. The Secretary will designate which donated food will be eligible for distribution under the NIS Program. Donated food so designated will be delivered by CCC to NIS processors upon request by FNS. FNS will request shipment of donated food only when it has received and approved requests from an eligible processor for the delivery of specified quantities along with proof of marketability (e.g., copies of written "intent to purchase" from recipient agencies). The Department will pay costs incurred in delivering the commodities to any appropriate location in the United States for use by the processor. The title to these commodities transfers to FNS upon their acceptance by the processor, and remains with FNS until the finished product is sold to an eligible recipient agency and reported to the appropriate State agency (§ 255.3(c)). The processor will submit monthly reports to each State agency with which it has a contract, on FNS approved forms, of sales within each State to the appropriate State agency not more than 30 days after the end of each month (§ 255.4(b)(10)). The States will submit donated food use reports to FNS on FNS approved forms within 60 days of the end of the month.

Value of the Donated Food

The agreement value (§ 255.2) of the donated food used in NIS is the price assigned by the Department to a donated food which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food at the beginning of the agreement contract year. This value will be established at the beginning of the federal agreement year and will remain in effect for the term of the agreement. The Department realizes that occasionally the agreement value of a commodity may be higher or lower than the market value for the same commodity. This may result in a net loss or gain for the processor when the agreement value of the donated food is passed on to the recipient agency. Slight increases and decreases tend to balance each other in situations where price quotations (i.e., bids) are for an extended period of time. The Department does not feel this will have a detrimental effect on industry.

Bonding

Processors will be required to maintain one surety and performance bond for all NIS donated food in its inventory (§ 255.4(b)(3)). A bond must be adequate to cover the value of all donated food on hand and on order and must be effective up to at least six months after the end of the agreement period. Bond amounts must be increased as inventory levels warrant. Irrevocable letters of credit would not be allowed under this proposal because FNS has had difficulties in the past when seeking payment for food losses under letters of credit.

Yield Factors

The Department believes that it is necessary to continue to require a 100 percent donated food return (§ 255.4(b)(4)). A yield factor is that percentage of donated food placed in a production run which must be contained in the processed product for the processor to meet its responsibilities under this program. It is necessary to do this in order to set an equitable standard of performance so as to ensure that all food processors efficiently utilize donated food. Although yield factors can vary by donated food and processed end product, a 100 percent yield return will be required by any agreement between FNS and a processor. A 100 percent yield factor is defined in such a way that if, for example, 100 pounds of cheddar cheese are placed in a production run, 100 pounds of cheddar cheese must appear in the processed end product. This requirement is currently contained in both the State and NCP processing regulations.

Inventory Levels

FNS will monitor inventories of commodities of NIS processors to ensure that the quantity of commodities for which the processors are accountable is at an acceptable cost-efficient level. FNS will allow the processor to hold more than a 6-month supply based on the processor's average monthly usage, only upon approval by FNS on the basis of a written justification or proof of marketability submitted by the processor (§ 255.3(e)).

Pricing Factors

As part of the federal agreement, a processor will establish those donated food value return system(s) which will be used for selling end products manufactured using NIS donated foods (§ 255.4(b)(2)). Processors shall use a method(s) which NIS ensures that the price of each case of end product is reduced by the agreement value of the donated commodity and which ensures proper accountability. A processor may sell directly to an eligible recipient agency (direct sale method) or through a distributor (indirect sale method). A direct sales method may involve providing a discount where the final net price is reduced by the value of the donated food contained in the product. A direct sales method may also involve providing a refund where the recipient agency applies for a refund after receiving the end products.

The indirect sale methods may be effected three ways. The sale may be made through a distributor with dual billing, i.e., the recipient agency is billed by the processor for the end product and by the distributor for transportation and other related charges. The sale may be made through a distributor without dual billing, i.e., the processor bills the distributor at a gross price and the distributor bills the recipient agency at the net price and receives a refund from the processor for the value of the donated food. Finally, the sale may be made through a distributor with a refund, i.e., the recipient agency receives a refund from the processor after purchasing the product through a distributor. Although a processor may choose to offer any or all of these donated food value return systems, States have the authority to select which method(s) will be used in their States.

In order to insure accountability in the NIS program, recipient agencies must be required to submit refund applications within 30 days of receipt of end products. Refund applications will be considered invalid if submitted over 60 days after receipt of the products. Processors will have 10 days after receipt of a valid refund application to issue payment to recipient agencies. Since the additional review of reports is being proposed under NIS (i.e., State review of processor reports and FNS review of State reports), timely reporting is necessary to ensure adequate supplies of donated food to processors.

Performance Reporting

Processors will be required to submit monthly performance reports to each State agency with which they have a State agreement (§ 255.4(b)(10)). Reports will be due within 30 days of the end of each month and must be in a standardized format approved as part of the State agreement. Processors will have an additional 90 days after the end of the agreement period to report any additional sales. Performance reports must list all sales made by the processor within the State during the report month, and previous sales not yet reported. Processors must also report the amount of NIS donated food used in the reported sales.

States will submit inventory drawdown reports to FNS for each processor selling NIS end products within the State within 60 days of the end of each report month (§ 255.5(c)). These reports must be on FNS approved forms.

Processors will also be required to submit to FNS monthly receipt reports (§ 255.4(b)(7)), which will list receipt of all NIS donated foods received during the month. These reports also must be on FNS approved forms and will be due 30 days after the end of each month.

Based upon the inventory drawdown reports from States and receipt reports from processors, FNS will update monthly each processor's inventory level for each donated food.

Sales Verification

All NIS processors selling products must verify a statistically valid sample of all reported sales (§ 255.4(c)(2)). The processor must verify that NIS end products were sold to eligible recipient agencies and that the agreement value of donated food was passed to the recipient agencies. The processor verification must be conducted at a confidence interval of 95 percent and must be conducted on at least a quarterly basis. Processors will have 60 days after the end of each quarter to verify through sampling all sales made within the previous sales quarter. Results of the sales verification and a corrective action plan to address deficiencies shall be submitted to the

appropriate State agency within 90 days of the end of a quarter. As a result of verification efforts, corrections to performance reports must be made on the next required monthly performance reports.

States will be required to verify a statistically valid sample of all sales reported by each processor selling within the State to determine the accuracy of processor reporting, proper distribution of end products and whether the value of the donated food was passed on to eligible recipient agencies. If a State agency determines any sales were improperly reported, the State agency shall disallow those sale and adjust monthly inventory drawdown reports accordingly. Results of the State agency sales verification may be used to project claims across the universe of total sales reported by the processor during the contract year.

Annual Inventory Reconciliation

Section 255.4(b)(8) includes a provision requiring each processor to submit annual reconciliation reports and make payments to FNS for all outstanding refund applications and excessive carryover inventories. This annual reconciliation report shall be made no later than 90 days after the end of the year to which the contract pertains. This requirement is applied to ensure that no processor enjoys a windfall as a result of ordering donated food far in excess of its needs as stated through sales activity reported to FNS. It affords FNS the ability to reduce excessive inventory balances on an annual basis to keep all processors within the six month allowable inventory level.

Audit

Processors will be required to obtain an independent audit by a certified public accountant (CPA) in accordance with § 255.4(b)(18) of this Part. Audit findings, deficiencies and recommendations shall be submitted to FNS by January 31 following the agreement year, which will run from July 1 to June 30. The frequency of audits will be based on the value of donated food that a processor receives in shipment during each agreement year. For any agreement year in which an NIS processor receives more than $250,000 in donated food, the processor must obtain an independent CPA audit. NIS processors which receive $75,000 to $250,000 in donated food each agreement year will obtain an independent CPA audit every two years for the recently completed contract year and those which receive less than $75,000 in donated food each agreement year will obtain an independent CPA audit every three years for the recently completed contract year. In instances in which FNS determines that an audit has disclosed serious deficiencies, the processor will be subject to additional CPA audits at the request of FNS.

Maintenance of Records

The regulations require participating processors to maintain complete and accurate records of the receipt, disposal and inventory of donated foods including end products processed from donated foods (§ 255.4(b)(9)).

The processor must maintain copies of invoices to substantiate the value assigned to the donated foods. Processors are also required to keep formulae, recipes, daily or batch production records, loadout sheets, bills of lading, and other processing and shipping records to substantiate the use of the donated foods and their subsequent redelivery to an eligible recipient agency.

The processor must document that sales reported on the monthly performance reports were made only to eligible recipient agencies and that the normal price of the product was reduced or a refund payment made for the amount established by the agreement.

All pertinent records must be made available for inspection and review upon request by FNS, its representatives, the USDA Office of the Inspector General, the General Accounting Office (GAO) and State agencies (§ 255.4(b)(11)). All records must be retained for a period of at least three years from the close of the federal fiscal year to which they pertain. Longer retention may be required for resolution of an audit or of any litigation.

Sanctions

The regulations governing the use of State administrative expense funds (7 CFR Part 235.11(2)) are proposed to be amended to include State agency failure to perform under Part 255 as a reason for taking fiscal sanctions against a State agency (235.11(b)(11)). The Department is also proposing that State administrative expense funds currently available for expenses incurred in the administration of the Food Distribution Program (7 CFR Part 250) also be available for State administrative expenses under NIS.

Termination of Processor Federal or State Agreements

If a federal agreement is terminated (§ 255.4(b)(14)), either by the processor of FNS, the processor is liable for any donated food remaining in its inventory. All NIS State agreements will require that upon termination of the processor's federal agreement, the State agreement will also terminate. The State, however, may elect to enter into a State processing contract with the processor under the provisions of 7 CFR Part 250 for products that do not contain NIS donated food. However, termination of a NIS State agreement does not necessarily nullify a federal agreement. When a State agreement is terminated, processors are no longer allowed to make sales of end products containing NIS donated food within that State. Processors are allowed 90 days from the date of termination to report sales made prior to the termination.

Food Containers and By-Products

Section 255.4(b)(17) includes a provision which requires that each processor shall return to FNS all funds received from the sale of donated food containers. It further requires the processor to return to FNS all funds received from the sale of any by-products derived from processing donated food or commercial food which has been substituted for donated food. This requirement is similar to that contained in § 250.15(b)(3)(viii) of the State processing regulations.

Miscellaneous Provisions

FNS is adding § 255.7 to address losses of donated food as a result of damage, improper distribution, misuse, embezzlement, theft, or obtainment by fraud to ensure the donated food is only used for the purpose of manufacturing and distributing processed end products to eligible recipient agencies. If donated food is lost as a result of any of the above circumstances, FNS will hold the processor responsible for payment for the value of the lost donated food in accordance with the provisions found in (§ 250.(6)(m). This action is necessary to ensure the value of the commodities is only realized by eligible recipient agencies.

List of Subjects

7 CFR Part 235

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Child Care Food Program, Food Distribution Program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure.

7 CFR Parts 250, 252 and 255

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social

programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 235 and 250 are proposed to be amended, Part 252 is proposed to be removed, and Part 255 is proposed to be added as follows:

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for Part 235 continues to read as follows:

Authority: Secs. 7 and 10, Pub. L. 89-642, 80 Stat. 888, 889 (42 U.S.C. 1776, 1779), unless otherwise noted.

2. In § 235.6, paragraph (c) is amended by adding the words "and the National Inventory System Program (7 CFR Part 255)" after the words "(7 CFR Part 250)".

3. In § 235.11, paragraph (b)(1) is revised to read as follows:

§ 235.11 Other provisions.

* * * * *

(b) *Sanctions imposed.* (1) FNS may recover, withhold or cancel payment of up to one hundred (100) percent of the funds payable to a State agency under this part, whenever it is determined by FNS that the State agency has failed to comply with the requirements contained in this part and in Parts 210, 220, 226 and 255 of this title.

* * * * *

PART 250—FOOD DISTRIBUTION PROGRAM

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

Authority: Sec. 32, Pub. L. 74-320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75-165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79-396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81-439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 81-665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84-540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85-931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86-756, 74 Stat. 899 (7 U.S.C. 1431nt); sec. 709, Pub. L. 89-321, 79 Stat. 1212 (7 U.S.C. 1446a-1); sec. 3, Pub. L. 90-302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93-288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93-326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16, Pub. L. 94-105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304(a), Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 613c nt); sec. 311, Pub. L. 95-478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); (5 U.S.C. 301), unless otherwise noted.

2. In § 250.6, paragraph (n) is amended by:

a. Removing the word "Distributing" in the first sentence and adding the words "Except as provided in the succeeding sentence, distributing" in its place.

b. Adding a new sentence after the first sentence to read as follows:

§ 250.6 Obligations of distributing agencies.

* * * * *

(n) * * * Distributing agencies, subdistributing agencies, and recipient agencies may not employ commercial facilities to process donated foods into different end products if that type of donated food has been designated as NIS donated food in the National Inventory System unless the commercial facility employed only distributes and sells the end products within the State and does not participate in NIS. * * *

* * * * *

PART 252—[REMOVED]

3. Part 252 is removed in its entirety.

4. A new Part 255—"National Inventory System Program" is added to 7 CFR Chapter II to read as follows:

PART 255—NATIONAL INVENTORY SYSTEM PROGRAM

Sec.

255.1 Purpose and scope.
255.2 Definitions.
255.3 Administration.
255.4 Processor responsibilities.
255.5 State agency reponsibilities.
255.6 Recipient agency responsibilities.
255.7 Miscellaneous provisions.

Authority: Sec. 416 Agricultural Act of 1949 (7 U.S.C. 1431).

§ 255.1 Purpose and scope.

(a) *Purpose.* This part provides a program through which the Food and Nutrition Service (FNS), State distrubuting agencies and private processors of food may enter into agreements under which the processor will process and distribute designated donated food to eligible recipient agencies. The program will be the sole system for processing donated commodities made available under the National Inventory System (NIS). States and processors may secure the processing of NIS donated food only through the NIS Program. Donated food designated as NIS donated food will continue to be made available under Part 250 in bulk form to States, but may only be processed under NIS agreements. The only exception to this rule is that a processor which distributes products in only one State may process NIS-type donated food under NIS or under a State processing contract. The intent of the program is to make processed end products available to all eligible recipient agencies and to place the burdens of administration at the levels best suited and equipped to handle the various responsibilities.

(b) *Scope.* The terms and conditions set forth in this part are those under which processors may enter into agreements with FNS and State distributing agencies for the processing of NIS commodities designated by the Secretary of Agriculture and the minimum requirements which NIS processors must meet. Also prescribed are State distributing agency and recipient agency responsibilities.

(c) *Eligible Recipient Agency.* Recipient agencies shall be eligible to participate in the NIS Program if they are eligible to receive donated commodities as stipulated in §§ 250.8 and 251.3.

§ 255.2 Definitions.

The terms used in this part that are defined in §§ 250.3 and 251.3 shall have the meanings ascribed to them therein, except as set forth in this section.

"Agreement value of the NIS donated commodity" means the price assigned by the Department to a NIS donated food and stated in a federal agreement which reflects the Department's current acquisition price, transportation and, if applicable, processing costs related to the food.

"Distributing agencies" (DA) means any State agency which enters into an agreement with the Department concerning the distribution of NIS donated food to eligible recipient agencies and recipients and the further processing of NIS donated food under the NIS Program; and FNS when it accepts title to NIS commodities from the Commodity Credit Corporation (CCC) for distribution to eligible recipient agencies under the National Inventory System Program.

"Donated food value return system" means a system used by a processor or distributor to reduce the price of the end product by the agreement value of the NIS donated commodity contained in the end product.

"End product" means a processed food product containing any amount of NIS donated food.

"Federal Agreement" means an agreement between FNS and a food processor which sets forth the terms and conditions for participation in the NIS Program.

"Inventory" means the sum total of each NIS donated food accepted by the processor minus the amount of each NIS donated food represented by sales to recipient agencies which are certified by the State agency.

"National Commodity Processing or NCP" means the program under which FNS and private processors of food may enter into an agreement under which the

processor will process and distribute designated NIS donated food to eligible recipient agencies. This program is authorized to run until June 30, 1987, at which time it shall be replaced by the NIS Program.

"National Inventory System Program or NIS Program" means the program under which FNS, State distributing agencies and private processors of food may enter into agreements under which the processor will process and distribute designated NIS donated food to eligible recipient agencies. This program will be the only available FNS program for the processing of NIS donated food available under NIS except as otherwise indicated in this Part (255.4(c)).

"NIS donated food" or "NIS donated commodity" means food donated by the Department for use by eligible recipient agencies and designated by the Secretary as available through the NIS.

"Recipient agency" means disaster organizations, charitable institutions, nonprofit summer camps for children, school food authorities, schools, service institutions, welfare agencies, nutrition programs for the elderly, nonresidential child care institutions and emergency feeding organizations that have approved State agreements with the State Distributing Agency.

"State Agreement" means an agreement between a State distributing agency and a food processor which sets forth the terms and conditions for the sale of specific NIS end products in each State.

"Substitution" means the replacement of NIS donated food with like quantities of domestically produced commercial food of the same generic identity and of equal or better quality (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.).

§ 255.3 Administration.

(a) *Functions.* The Secretary will designate the NIS donated food which will be available under the NIS Program. FNS will enter into agreements with eligible processors under the NIS Program. The Department will pay the costs of delivering NIS donated food to participating NIS Program processors.

(b) *Agreement Approval.* FNS may enter into a federal agreement with any eligible applicant food processor. The federal agreement shall establish: NIS donated food yield; the value of NIS donated food; allowable NIS donated food value pass through system(s); master listing of approved end products; and required bond coverage. Upon approval of a federal agreement with a processor, FNS will provide State distributing agencies through the FNS regional offices with all aforementioned agreement information contained in this section.

(c) *Food orders.* NIS Program processors shall submit written requests for NIS donated food. Processors may receive only that quantity of NIS donated food which FNS determines is consistent with the processor's ability to sell end products and/or the processor's past demonstrated performance under the NCP and State processing programs. Upon approval of a request, FNS will request that CCC deliver the NIS donated food to the processor at a location mutually agreed upon by FNS and the processor. The title to the NIS donated food transfers to FNS upon acceptance by the processor. FNS retains title to such NIS donated food until:

(1) A State agency certifies that an approved sale of NIS end products has occurred. At such time title to the NIS donated food represented by that sale passes to the eligible recipient agency which received the NIS end product;

(2) The NIS donated food is disposed of because it is damaged or out-of-condition; or

(3) Title is transferred to the NIS Program processor after termination of the agreement upon proper payment to FNS for the NIS donated food.

(d) *Substituted food.* When FNS approves the substitution of commercially acquired food for NIS donated food, title to the substituted food shall transfer to FNS and the processor shall use the substituted food in accordance with the terms and conditions of this Part.

(e) *Inventory levels.* Processors shall insure that inventories of NIS donated food remain at the lowest cost-efficient level. In no event shall a processor hold in inventory more than a 6-month supply of NIS donated food, based on average monthly usage under the NIS Program. Under no circumstances shall the amount of NIS donated food requested by the processor be more than the processor can accept and store at any one time. FNS will make no further distribution to a processor whose inventory exceeds these limits until such time as the inventory is reduced to a six-month level. At the end of each contract year, if FNS determines that the processor holds excessive inventories of NIS donated food, FNS may require the processor to purchase from FNS the excess amount.

(f) *Monitoring.* FNS will coordinate NIS processor on site reviews. Such reviews may be conducted by representatives of FNS and other Federal or State agencies. The FNS regional offices shall have the responsibility for monitoring State agency compliance with NIS Program functions through reviews.

§ 255.4 Processor responsibilities.

(a) *Federal Agreement Overview.* Except as otherwise provided for in this Part, any processor is eligible to apply for participation in the NIS Program. Applications may be filed with FNS at any time on an FNS approved form. In order to be approved for participation in the NIS, the processor must demonstrate at a minimum: financial responsibility; the ability to meet the terms and conditions of the regulations and the NIS agreement; the ability to accept and store commodities in minimum truckload quantities; if applicable, satisfactory prior performance under the State and/or NCP donated food processing programs; anticipated new markets for NIS end products in the area of the country served by the processor; the ability to distribute processed products to eligible recipient agencies; and a satisfactory record of integrity, business ethics and performance. In addition, the processor must demonstrate the ability to sell end products under NIS by submitting supporting documentation such as written intent to purchase, bids awarded, or historical sales performance.

(b) *Federal Agreement Provisions.* In accordance with the following provisions and the NIS Federal agreement, any processor desiring to participate in the NIS Program must establish itself as an approved NIS processor by obtaining an approved federal agreement. Approval of the federal agreement shall be a prerequisite for entering into NIS State agreements. The processor shall agree to be bound to the following requirements:

(1) The processor shall submit to FNS end product data schedules which include a description of each end product to be processed, the quantity of each NIS donated food used and any other ingredient needed to yield a specific number of units of each end product. FNS may permit processors to specify the total quantity of flavorings or seasonings to be used without identifying the ingredients which are, or may be components of seasonings or flavorings. The end product data schedule must include the processors' free on board (FOB) plant price schedule for quantity purchases of processed products and the price reduction which reflects the value of NIS donated food. When determining the value of the NIS donated food, the processor shall use the donated food agreement value of the NIS donated food. The end product data

schedule shall be made part of the NIS Federal agreement.

(2) The processor shall use a method or methods of selling end products to recipient agencies which ensures that the price of each case of end product is reduced by the agreement value of the NIS donated commodity and ensures proper accountability. In line with FNS guidelines and subject to FNS approval, the processor shall select one or more of the following donated food value return systems to use during the term of the agreement. The system(s) selected by the processor shall be stated in the federal agreement and shall be the only system(s) permitted for use under State agreements. Regardless of the method used, the processor shall ensure that the invoice clearly indicates the discount included or refund due on the end product and clearly identifies that the discount included or refund due is for the value of the NIS donated food.

(i) *Direct Sale.* A direct sale is a sale by the processor directly to the eligible recipient agency. The following two methods of direct sales are allowed:

(A) *Discount System.* When the recipient agency pays the processor directly for an end product purchased, the processor shall invoice the recipient agency at the net case price which shall reflect the value of the discount established in the agreement.

(B) *Refund System.* The processor shall invoice the recipient agency for the commercial/gross price of the end product. The recipient agency shall submit a refund application to the processor or through the State agency if the State requires it within 30 days of receipt of the processed end product. The processor shall pay directly to the eligible recipient agency within 10 days of receipt of the refund application from the recipient agency, an amount equal to the established agreement value of NIS donated food per case of end product multiplied by the number of cases delivered to and accepted by the recipient agency. After the end of the 60 day refund submission deadline, a recipient agency shall not be reimbursed for the value of NIS donated food. In no event shall refund applications for purchases during the period of agreement be accepted by the processor later than 60 days after the close of the agreement period.

(ii) *Indirect Sale.* An indirect sale is a sale by the processor through a distributor to an eligible recipient agency. Indirect sales can be made with or without dual billing. Dual billing involves the processor billing the recipient agency for the end product and the distributor billing the recipient agency for the cost of services rendered in the handling and delivery of the end product. The following three methods of indirect sales are allowed:

(A) *Sale Through Distributor with Dual Billing.* When end products are sold to recipient agencies through a distributor under a system utilizing dual billing, the processor shall invoice the recipient agencies directly for the end products purchased at the net case price which reflects the value of the discount established in the agreement. The processor shall ensure that the distributor bills the recipient agencies only for the services rendered in the handling and delivery of the end product. The processor shall maintain delivery and/or billing invoices to substantiate the quantity of end product delivered to each recipient agency and the net case price charged by the processor which reflects the discount established by the agreement.

(B) *Sale Through Distributor without Dual Billing (Hybrid System).* When end products are sold to recipient agencies through a distributor without dual billing, processors shall provide refunds to the distributor and ensure that the distributor provides discounts of equal value to recipient agencies. Under this system, the processor shall sell end products to a distributor at the processor's commercial/gross price for the end product. The processor's invoice shall reflect the value of NIS commodities contained in the end product as established by the primary agreement. The processor shall ensure that the distributor invoices the recipient agency at a price which reflects the value of the discount established by the agreement. The processor shall ensure that the distributor submits a refund application to the processor within 30 days after the eligible recipient agency receives the processed end product. The processor shall ensure that the refund application includes documentation of the purchase of end products by the eligible recipient agency through substantiating invoices and that the recipient agency has purchased the end product at the net case price which reflects the value of the discount established by the federal and State agreements. The processor shall ensure that the distributor does not issue credits to recipient agencies for future purchases of end products to cover the value of the donated food. Within 30 days of the receipt of the refund application, the processor shall issue payment directly to the distributor in an amount equal to the stated agreement value of the NIS donated food contained in the purchased end products coverd by the application. In no event shall refund applications for purchases during the period of agreement be accepted by the processor later than 60 days after the close of the agreement period.

(C) *Sale Through Distributor with a Refund.* Under the refund system, processors shall sell end products to distributors at the commercial/gross price of the end product. Distributors shall sell end products to recipient agencies at the commercial/gross price of the end products. Processors shall ensure that their invoices and the invoices of distributors identify the discount established by the agreement. Recipient agencies shall submit refund applications within 30 days of receipt of the processed end product to the processor or through the State agency if the State requires it. Within 10 days of receipt of the refund application from the recipient agency or the State certifying actual purchases of end products based on substantiating invoices maintained by the recipient agency, the processor shall compute the amount and issue payment of the refund directly to the recipient agency. After the end of the 60 day refund submission deadline, a recipient agency may not be reimbursed for the value of NIS donated commodities. In no event shall refund applications for purchases be accepted by the processor later than 30 days after the close of the agreement period.

(3) Prior to approval, the processor shall furnish to FNS a performance supply and surety bond obtained from surety companies listed in the current Department of Treasury Circular 570 sufficient to protect the NIS donated food for which the processor is responsible. The coverage of the bond shall be increased prior to requesting food orders if the amount requested would cause the bond coverage to be inadequate. In no event shall a processor's bond be less than the value of food on order and in inventory, determined by using the agreement value of the NIS donated food.

(4) The processor shall withdraw from NIS donated food on hand only the amount of donated food needed to produce the NIS end product. Processors shall ensure that amount equivalent to 100 percent of the NIS donated food provided to the processor under the NIS Program is contained in end products. Additional commodities required to account for loss of NIS donated food during production shall be obtained from non-donated food.

(5) The processor shall contact FNS regarding any substitution of NIS donated food. Advance approval must be obtained from FNS for any substitutions except to replace foods

with commercial products to meet the 100 percent yield requirement. With such replacement, the processor shall substitute for NIS donated food like quantities of domestically produced commercial food of the same generic indentity (i.e., cheddar cheese for cheddar cheese, nonfat dry milk for nonfat dry milk, etc.) and of equal or better quality. Substitution may not be made solely for the purpose of selling or disposing of the donated food in commercial channels for profit. For substitution not related to the 100 percent yield requirement, substitution will be approved only in the situation of commingling of NIS donated food and commercial food or when delays in donated food shipments adversely affect production. The processor shall maintain records to substantiate that it continues to acquire on the commercial market amounts of substitutable food consistent with its level of non-NIS Program production and shall document the receipt and disposition of the NIS donated food.

(6) The processor shall be liable for all NIS donated food provided under the agreement. The processor shall report to FNS within 30 days of receipt of the NIS donated food, any loss or damage to donated food and shall dispose or damaged or out-of-condition food in accordance with § 250.7. All such reports shall be made on an FNS approved form.

(7) The processor shall submit to FNS monthly reports concerning NIS donated food. The reports shall be received by FNS no later than the final day of the month following the reporting period. The report shall include: the amount of NIS donated food received by the processor from the Department during the reporting period and the date of such shipments, the amount of NIS donated food held by the processor at the beginning of the reporting period, the amount of NIS donated food represented in sales of end products reported to each State agency for the reporting period, and the amount of donated food remaining at the end of the reporting period.

(8) At the end of the agreement period, the processor may, for a period of 90 days, report to FNS adjustments in the amount of NIS donated food represented by sales of end product to eligible recipient agencies provided such sales are confirmed by the State agency upon State review of performance reports submitted by the processor. If FNS requires the processor to purchase excess amounts of NIS donated food held by the processor in inventory, the processor may not enter into a subsequent agreement with FNS until FNS has received payment for such excess donated food.

(9) The processor shall maintain complete and accurate records of the receipt and use of NIS donated food and the production, distributing and sales of end products processd for NIS donated food. The processor shall keep production reocords, formulae, recipes, daily or batch production records, loadout sheets, bills of lading, and other processingand shipping records to substantiate the use of the NIS donated food and the subsequent redelivery to an eligible recipient agency.

(10) The processor shall provide performance reports to each State agency concerning sales of approved products to eligible recipient agencies as required by the State agreement and § 255.4(d)(3). Failure to do so may result in termination of the federal agreement. The processor shall conduct verification of all sales reported to the State in such performance reports, as required by the State agreement and this section. The processors shall report the results of such verification to the State and adjust performance reports to reflect such verification activities as required by the State agreement and this section.

(11) The processor shall make all pertinent records available for inspection and review upon request by FNS, its representatives, the General Accounting Office (GAO), the Office of the Inspector General (OIG) and any other State or Federal agency with oversight responsibilities. All records must be retained for a period of three years from the close of the Federal fiscal year to which they pertain. Longer retention may be required for resolution of an audit or of any litigation.

(12) The processor shall obtain upon FNS request, Federal acceptance service grading and review of processing activities and shall be bound by the term and conditions of the grading and/or review in accordance with the provisions contained in § 250.15(h).

(13) The processor shall indemnify and save FNS, the recipient agency, and the State free and harmless from any claims, damages, judgements, expenses, attorney's fees, and compensation arising out of physical injury, death, and/or property damage sustanined or alleged to have been sustained in whole or in part by any and all persons whatsover as a result of or arising out of any act or omission of the processor, his/her agents or employees, or cause or resulting from any deleterious substance, including bacteria, in any of the products produced from NIS donated food.

(14) Upon agreement termination, the processor shall pay FNS for all NIS donated food accepted by the processor and not used in authorized NIS end products sold to eligible receipent agencies in accordance with this Part. The NIS donated food shall be valued as follows:

(i) When a federal agreement is terminated, or has expired and FNS determines that the processor failed to comply with the terms and conditions of the agreement, or because any right of FNS or the State agency is threatened or jeopardized by the processor, the possessor shall pay FNS, upon demand, an amount equal to the CCC unrestricted sales price, the cost to CCC of replacement of the NIS donated food on the date the agreement is terminated, or the agreement value of the NIS donated food, plus any expenses incurred by FNS or the State agency. FNS shall immediately notify the appropriate State agencies upon the termination of a processor's federal agreement.

(ii) When the federal agreement is terminated, or has expired and there has been no fault or negligence on the part of the processor, the processor shall pay FNS, upon demand, an amount equal to the CCC unrestricted sales price, the cost to CCC of replacement on the date the agreement is terminated, or the agreement value of the NIS donated foods. FNS will immediately notify the appropriate State agencies upon the termination of a processor's federal agreement.

(15) The processor shall comply fully with the provisions of the NIS agreement and all federal regulations and instructions relevant to the NIS Program. Failure of the processor to comply with all such requirements shall be grounds for termination by FNS of the federal agreement.

(16) The processor shall label end products in accordance with § 250.15(i) and, when end products contain vegetable protein products, in accordance with 7 CFR parts 210, 225, or 226, Appendix A. If a manufacturer makes a claim of an end product's contribution to meal pattern requirements for the Child Nutrition Programs, the product must carry a Child Nutrition (CN) lable, in accordance with the CN Labeling Program as established in 7 CFR Part 210, 220, 225 and 226, Appendix C.

(17) the processor shall return to FNS the value of or sales proceeds from the sale of NIS donated food containers and the value of or sales proceeds from the sale of any by-products of NIS donated food or commercial food which have

been substituted for NIS donated food. The value of donated food containers and by-products shall be determined by FNS.

(18) NIS processors shall obtain an independent audit of NIS operations by a certified public accountant (CPA). The frequency of audits will be based on the value of NIS donated food that a processor receives in shipment during each agreement year. For any year in which an NIS processor receives more than $250,000 in NIS donated foods, the processor must obtain an independent CPA audit. Processors which receive $75,000 to $250,000 in NIS donated food each year must obtain an independent CPA audit every two years and those which receive less than $75,000 in NIS donated food each year must obtain an independent CPA audit every three years. In instances in which FNS determines that an audit has disclosed serious deficiencies, the processor may be required to complete additional CPA audits at the request of FNS.

(i) The processor shall ensure that the audit is conducted in accordance with the auditing provisions set forth under the Uniform Federal Assistance Regulations (7 CFR Part 3015, Subpart I).

(ii) The costs of the audits shall be borne by the processors.

(iii) Failure to conduct an audit as required by paragraph (b)(17) of this section of failure to correct deficiencies identified by such audit will render the processor ineligible to enter into another NIS agreement until the required audit has been conducted and/or deficiencies corrected.

(iv) Processors shall develop a written response to FNS addressing deficiencies which have been identified in the audit. Such response shall include:

(A) Corrective action which has been taken to eliminate the deficiency;

(B) Corrective action which the processor proposes to take to eliminate the deficiency;

(C) The timeframes for the implementation and completion of the corrective action;

(D) A determination of what caused the deficiency; and

(E) Deficiencies which have been identified that the processor takes exception to and an explanation for the exception.

(c) *State Agreement Overview.* Upon approval of a Federal agreement by FNS, State agencies may enter into State agreements with processors. Copies of all State agreements shall be forwarded to the appropriate FNS regional office for their review and information. In order to participate in the NIS Program, a processor must enter into a federal agreement and at least one State NIS Program agreement.

(d) *State Agreement Provisions.* In accordance with the following provisions and the NIS State agreement, any processor participating in the NIS Program may sell a processed product containing the NIS donated food received from FNS to any eligible recipient agency within the State. The State agreement shall be valid for a period of one year and shall terminate upon termination of the processor's federal agreement with FNS. State agencies shall ensure that the following requiremens or items of information are contained in the NIS State agreements:

(1) State agencies shall choose end products approved under a processor's NIS federal agreement that may be sold under the State agreement. However, State agencies participating in NIS may restrict the sale of end products available through a processor and approved under the federal agreement only in the following ways:

(i) The State agency may restrict the sale of an entire class of end products (e.g., any end product which fails to make a contribution to the meal pattern requirements of §§ 210.10; 220.8; 225.20; and 226.20).

(ii) The State agency may restrict the sale of an end product which does not meet specifications established by the State agency for that class of end products.

(iii) The State may restrict the sale of a processor's product if the State requires an end product covered under Parts 210, 220, 225, and 226, to carry CN label and the processor's end product does not carry a CN label.

(iv) The State may require processors electing to participate in NIS to make their end products available to eligible recipient agencies throughout the State.

(v) The State may restrict the sale of an end product so long as the restriction on the sale of that end product applies to all NIS processors operating in the State.

(2) The State agreements shall establish which commodity value pass through system(s) approved in § 255.4 (b)(3) of the federal agreement may be utilized under the State agreement.

(3) The processor shall submit to the State agency monthly performance reports reflecting the sale and delivery of end products within the State. The processor shall ensure that the monthly activity report is received no later than the last day of the month following the reporting month. This report must be submitted on an FNS approved form. The processor shall identify the month of delivery for each sale reported. The sale and delivery of end products in any prior month may be included in the monthly activity report. The processor monthly activity report shall include: a list of all recipient agencies purchasing end products and the number of units of end products delivered to each during the report month: the net price paid for each unit of end product and the amount of the discount given or refund made per case; when the sale is made through a distrubutor, the name of the distributor; and the total amount of NIS donated food represented by product sales. Sales of end products in which a refund system is used shall be reported only upon payment by the processor of the refund.

(4) Processors shall verify a statistically valid sample of all sales which were made through distributors and reported to the State agency. The sample chosen must have a 95 percent confidence level. The processor shall verify, at a minimum, on a quarterly basis that sales of NIS end products were made only to eligible recipient agencies and that the value of the NIS donated commodities was passed through to those recipient agencies. The processor shall report to the State agency the number of invalid or inaccurate sales identified through the verification effort immediately upon completion of the verification. These sales shall be corrected on the succeeding performance report to the State agency. At the same time this report is submitted, the processor shall submit to the State agency a corrective action plan designed to correct problems identified in the verification effort. The processor shall adjust all monthly performance reports to reflect the invalid sales identified during the verification effort required by this paragraph.

(5) The processor shall maintain complete and accurate records of the receipt and use of NIS donated food and the production, sale and distribution of end products containing NIS donated food within the State (§ 255.4(b)(7)).

(6) If the State agency elects to terminate its State agreement, it must notify FNS of its intent to terminate the agreement at the same time the processor is so notified. Termination shall be accomplished in accordance with the provisions contained in paragraph (b)(14) of this section.

(7) If FNS or the processor terminates the NIS federal agreement or the federal agreement expires and is not renewed, the State agreement with that processor shall also terminate. After termination of the State agreement, the processor shall be permitted to report sales of end products made prior to termination to

the State agency for a period of 90 days following the termination date.

§ 255.5 State agency responsibilities.

(a) *Eligible recipient agencies.* The State agency shall provide each processor with an approved State agreement a listing of all recipient agencies eligible to receive NIS donated food available under the NIS Program within the State. This listing shall be updated on a quarterly basis, at a minimum. The State agency may charge a processor a cost-based fee for the list of approved recipient agencies.

(b) *Processor and end product information.* The State agency shall provide to all eligible recipient agencies with the State a listing of all NIS processors with approved State agreements. The State agency shall also provide a listing of all approved end products including pricing information. This listing will be updated on a quarterly basis, at a minimum.

(c) *Reporting.* The State agency shall obtain and review the monthly performance reports required of processors by § 255.4(d)(3). On the basis of such reports and verification of the accuracy of such reports, the State agency shall provide to the appropriate FNS Regional Office (FNSRO) donated food use certifications for each NIS processor holding an approved State agreement. The certification shall be based on the amount of NIS donated food used in NIS end products produced and sold in accordance with this Part. The donated food use certification shall be transmitted to the appropriate FNSRO no later than 30 days after the processor is required to submit each monthly activity report to the State agency pursuant to § 255.4(d)(3). State agencies may require whatever supporting documentation it deems necessary to substantiate that the sales reported were made and the discount or refund was passed through to the recipient agency. The State agency may charge recipient agencies a cost-based fee for monitoring performance reports.

(d) *Verification.* The State agency shall monitor all processors holding State agreements and verify processor reported sales to ensure compliance with the terms and conditions of the State agreement and NIS regulations.

(1) *Verification and Invalid Sales.* The State agency shall verify a statistically valid sample with a 95 percent confidence interval of all processor reported sales for the previous quarter to determine the accuracy of processor reporting, proper distribution of end products and whether the value of NIS donated food was passed on to eligible recipient agencies. Each sample shall run consecutively with the previous sample. Results of State agency sales verification will be used to project claims across the universe of total sales reported during the contract year. State agency verification of sales shall take precedence over processor verification in the event of a discrepancy between the results of the two verification efforts. If, as a result of this verification, the State agency determines that the value of NIS donated food has not been passed on to recipient agencies or that end products have been improperly distributed, the State agency shall disallow those sales and adjust the subsequent donated food use certification to reflect such disallowed sales. The State agency shall inform the processor of the results of verification activities and require the processor to initiate a corrective action plan to address any deficiencies identified. The State agency shall maintain all documentation pertaining to verification of processor sales and have it available for review during an FNSRO management evaluation of the State.

(2) *Monitoring.* The State agency may conduct monitoring of processors holding State agreements. This should include, but not be limited to, monitoring of records pertaining to the production of NIS donated foods and records pertaining to NIS reported sales within the State including invoices, delivery tickets and distributor reports. State agencies may be requested to assist FNS in on-site reviews conducted by FNS or other Federal reviewing agencies in accordance with § 255.3(f).

(e) *State Agency Performance.* (1) If a State is found to have failed to comply with any of the requirements of the Part, the State will be required to submit to the appropriate FNS Regional Office and implement within 30 days, a Corrective Action (CA) plan to address such deficiencies. If the State fails to correct identified deficiencies, FNS may suspend or terminate the State's participation in the NIS Program and withhold or recover from the State an appropriate portion of State Administrative Expense Funds provided to or available to the State pursuant to 7 CFR 235.4(b)(2) for the Food Distribution Program.

§255.6 Recipient agency responsibilities.

(a) *Agreement.* Recipient agencies that have approved agreements with State distributing agencies to receive NIS donated food may purchase end products produced under the NIS Program.

(b) *Refunds.* A recipient agency purchasing end products under the NIS Program from a processor utilizing a refund system shall submit a refund application supplied by the processor to the processor or the State agency if the State requires it within 30 days of receipt of the end products. Refund applications submitted to the processor after the 60 days will not be paid. Recipient agencies must ensure that any funds received as a result of refund payments be used in food service operations.

(c) *Verification/Audits.* If requested by the State agency or FNS, each recipient agency shall cooperate in the verification/audit of end product sales reported by processors under the NIS Program. The recipient agency may be requested to verify actual purchases of end products as substantiated by the recipient agency's invoices and may also be requested to verify that the invoice correctly identifies the discount included or refund due for the value of the donated ingredient contained in the end product.

(d) *Recipient agency records.* Each recipient agency shall maintain accurate and complete records with respect to the receipt, disposal, and inventory of NIS donated food, including products processed from NIS donated food, and with respect to any funds which arise from the operation of the NIS Program.

(e) *Competitive Bidding of End Products.* Purchasing recipient agencies shall comply with State or local competitive bid procedures or the procurement standards in OMB Circular No. A–102, whichever are more stringent as determined by the recipient agency, for the purchase of NIS processed end products.

§ 255.7 Miscellaneous provisions

(a) *Improper distribution or loss of or damage to donated food.* If a processor improperly distributes or uses any NIS donated food, or causes loss of or damage to a NIS donated food through its failure to provide proper storage, care, or handling, FNS shall require the processor to pay to the Department the value of the NIS donated food as determined by the Department.

(b) *Disposition of damaged or out-of-condition food.* NIS donated food which is found to be damaged or out-of-condition and is declared unfit for human consumption by Federal, State or local health officials, or by other inspection services or persons deemed competent by the Department, shall be disposed of in accordance with instructions of the Department. This instruction shall direct that unfit donated food be sold in a manner prescribed by the Department with the net proceeds thereof remitted to the

Department. Upon a finding by the Department that NIS donated food is unfit for human consumption at the time of delivery to a recipient agency and when the Department or appropriate health officials require that such donated food be destroyed, the processor shall pay for any expenses incurred in connection with such donated food as determined by the Department. The Department may, in any event, repossess damaged or out-of-condition NIS donated food.

(c) *Sanctions and mismanagement.* Any processor, State agency or recipient agency which has failed to comply with the provisions of this part or any instructions or procedures issued in connection herewith, or any agreements entered into pursuant hereto, may, at the discretion of the Department, be disqualified from further participation in the NIS Program. Reinstatement may be made at the option of the Department. Disqualification shall not prevent the Department from taking other action through other available means when considered necessary, including prosecution under applicable Federal statutes. FNS may conduct a verification of processor reported sales utilizing a statistically valid sampling technique. If, as a result of this verification, FNS determines that the value of the NIS donated food has not been passed on to recipient agencies or if end products have been improperly distributed, FNS may assert a claim against the processor. Such claim may include a projection of the verification sample to the total NIS sales reported by the processor.

(d) *Embezzlement, misuse, theft, or obtainment by fraud of commodities and commodity-related funds, assets, or property in child nutrition programs.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud, NIS commodities donated for use in the NIS Program, or any funds, assets, or property deriving from such donations, or whoever receives, conceals, or retains such commodities, funds, assets, or property for his own use or gain, knowing such commodities, funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to Federal criminal prosecution under section 12(g) of the National School Lunch Act, as amended, or section 4(c) of the Agriculture and Consumer Protection Act of 1973, as amended. For the purpose of this paragraph "funds, assets, or property" include, but are not limited to, NIS commodities which have been processed into different end products as provided for by this part, and the containers in which commodities have been received from the Department.

(Approved by the Office of Management and Budget under control No. 0584–0325)

Dated: August 11, 1986.

John W. Bode,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 86–18409 Filed 8–14–86; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 441

[Doc. No. 0091A]

Table Grape Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise the reissue the Table Grape Crop Insurance Regulations (7 CFR Part 441), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Add as a cause of loss the unavoidable failure of irrigation water supply after insurance attaches; (2) change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (3) change to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for an insurance offer for yield determinations; (4) allow the guarantee to be based on "stages"; (5) revise the date table; (6) shorten the length of time an insured has to give notice when claiming an indemnity; (7) change the method of computing indemnities when acreage, share, or practice is underreported; (8) add definitions of "loss ratio" and "cluster thinning and removal". The authority for the promulgation of this rule is contained in the Federal Grape Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than September 15, 1986, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096-South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1991.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the talbe grape policy are:

1. Section 1.a.—Add the failure of irrigation water supply due to unavoidable cause as an insurable cause of loss . This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. Section 2.c.—Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This limits indemnities to the insurable interest at the time of loss.

3. Section 4.b.—Add a provision to base the production guarantee on the stage of development. This is added to help reduce overinsuring because of expense not incurred until after the first stage.

Section 4.e.—Add a provision to require submission of a production report prior to the next crop year for determining the yield guarantee. In cases where such production report cannot be furnished, the Corporation will assign a yield to determine the yield guarantee for the crop year.

4. Section 5.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis, and coverages will, therefore, reflect the actual production history of the crop on the unit.

Remove the provisions for transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

5. *Section 7.f.*—Change the end of the insurance period date in certain counties.

6. Section 8.a.(4)—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities in more timely fashion.

7. Section 8.a.(4)(b) and 9.a.(5)—Change the date for the end of the insurance period from October 31 to the date contained in section 7.f.

8. Section 9.—When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and the complexity of calculations.

9. Section 9.e.—Change to allow appraised production that meets the California Department of Food and Agriculture minimum standards to be included in the total production.

10. Section 9.e(1)—Add a provision to count toward the total production any damaged grapes that may be marketed for another use.

11. Section 9.e.(2)(a)—Replace "Green drop" with "Cluster thinning and removal" to be specific in our terminology.

12. Section 9.e.(2)(c)—Add a provision to count as appraised production any unharvested production for which table grape cultural practices were discontinued following an appraisal.

13. Section 17.—Add definition of "Cluster thinning and removal" and "Loss ratio".

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register.** Written comments will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 441

Crop insurance, Table grape.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Table Grape Crop Insurance Regulations (7 CFR Part 441), effective for the 1987 and succeeding crop years, to read as follows:

PART 441—TABLE GRAPE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.

441.1 Availability of table grape crop insurance.
441.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
441.3 OMB control numbers.
441.4 Creditors.
441.5 Good faith reliance on misrepresentation.
441.6 The contract.
441.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1987 and Succeeding Crop Years

§ 441.1 Availability of table grape crop insurance.

Insurance shall be offered under the provisions of this subpart on table grapes in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 441.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for table grapes which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

§ 441.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 441.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 441.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the table grape crop insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity woud not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 441.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the table grape crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table.

Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 441.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the table grape crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a table grape contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Table Grape Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Table Grape—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy ,"you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period.

(1) Adverse weather conditions;

(2) fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanio eruption;

(6) Direct Mediterranean Fruit Fly damage; or

(7) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches; unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(6).

b. We will not insure against any loss of production due to:

(1) the neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;

(2) the failure to follow recognized good table grape management practices;

(3) the failure or breakdown of irrigation equipment or facilities;

(4) the failure to follow recognized good table grape irrigation practices;

(5) the impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) any cause not specified in subsection 1.a. as an insured loss.

2. Crop, Acreage, and Share Insured.

a. The crop insured will be any insurable variety of grapes grown for harvest as table grapes on insured acreage on which the cultural practices to produce table grapes are carried out and for which a guarantee and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be grapes grown on insurable acreage as designated by the acturial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured grapes at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) the time of loss; or

(2) the beginning of harvest.

d. We do not insure any acreage:

(1) On which the vines, after being set out, have not reached the number of growing seasons designated by the actuarial table;

(2) Which has not produced an average of 150 lugs of table grapes per acre;

(3) Which does not have acceptable records of acreage and production unless we agree, in writing, to insure such acreage; or

(4) With less than a 90 percent stand of bearing vines based on the original planting pattern, unless we agree, in writing, to insure such acreage.

e. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water at the time insurance attaches, to carry out a good grape irrigation practice.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of Acreage, Share, and Practice.

You must report on our form:

a. All the acreage of grapes in the county on which cultural practices to produce table grapes are carried out and in which you have a share;

b. The practice;

c. Your share on the date insurance attaches; and

d. The number of bearing vines (if less than 90 percent of a stand based on the original planting pattern). You must designate separately any acreage that is not insurable. You must report if you do not have a share in any grapes grown in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The production guarantee in the actuarial table is the second stage guarantee. The first stage guarantee is 40 percent of the second stage guarantee. The stages are:

(1) First stage applies from the date insurance attaches until April 1 for Riverside and San Bernadino counties and May 1 for all other counties and for all varieties except Thompson Seedless. Thompson Seedless will remain in the first stage from the time insurance attaches until chemical treatment cultural practices to produce table grape sizing is carried out. (Our liability will be limited to the first stage guarantee if the grapes were damaged during this period to the extent that growers in the area generally would not further care for the crop.)

(2) Second stage applies to all grapes after the first stage; provided, that the cultural practices to produce table grapes were carried out.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

e. You must furnish a report of production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the

purpose of determining your guarantee for the present crop year.

If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-half percent (1–½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first preimum billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period.

Insurance attaches or February 1 and ends on the earliest of:

a. Total destriction of the grapes on the unit;

b. Discontinuance of cultural practices to produce table grapes;

c. The date harvest should have started on the unit on any acreage which will not be harvested as table grapes;

d. Harvest;'

e. Discontinuance of harvesting of table grapes on the unit;

f. Final adjustment of a loss; or

g. The following applicable date of the calendar year in which the grapes are normally harvested:

California county(ies)	Variety	Datee
Fresno, Kern, Kings	Perlette	August 15.
Madera, and Tulare	Cardinal	August 15.
	Exotic	August 31.
	Flame Seedless	August 31.
	Superior Seedless	August 31.
	Red Malaga	September 15.
	Queen	September 15.
	Thompson Seedless.	September 15.
	Black Rose	September 30.
	Italia	September 30.
	White Malaga	October 15.
	Ribier	October 15.
	Ruby Seedless	October 15.
	All others	October 31.
Merced, Stanislaus	Flame Seedless	September 15.
and San Joaquin	Thompson Seedless.	September 30
	Ribier	October 15.
	Flame Tokay	October 15.
	All others	October 31.
Riverside and San Bernadino.	Beauty Seedless	July 15.
	Perlette	July 15.
	All others	July 31.

8. Notice of Damage of Loss.

a. In case of damage or probable loss:

(1) You must give us written notice if, during the period before harvest, the grapes on any unit are damaged and you decide not to further care for or harvest any part of them.

(2) You must give us notice:

(a) At lease 15 days before the beginning of harvest if you anticipate a loss on any unit; or

(b) Immediately, if damage occurs within 15 days prior to harvest or during harvest.

(3) If you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(a) Total destruction of the grapes on the unit;

(b) Discontinuance of cultural practices to produce table grapes;

(c) Discontinuance of harvest of any acreage on the unit; or

(d) The date harvest would normally start if any acreage on the unit is not to be harvested as table grapes.

(4) Unless notice has been given under subsection (3) above, and in addition to the other notices required by the subsection, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earlier of:

(a) Harvest of the unit; or

(b) The calendar date for the end of the insurance period (subsection 7.f).

b. You must obtain written consent from us before you destroy any of the grapes which are not to be harvested.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity or a unit must be submitted to us on our form not later than 60 days after the end of the insurance period (see Section 7).

b. We will not pay any indemnity unless you:

(1) Establish the total production of grapes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of grapes to be counted (see subsection 9.e.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in lugs) to be counted for a unit will include all production harvested as table grapes and all appraised production, that meets the California Department of Food and Agriculture minimum standards.

(1) Table grape production damaged by insurable causes within the insurance period that could be marketed for any use as other than table grapes will be determined by multiplying the greater of the total value of the grapes per ton or $50 times the number of tons, and dividing that result by the highest price election available. This result will be the number of lugs to count.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes, and any change in management practices (cluster thinning and removal);

(b) Not less than the applicable guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our prior written consent;

(c) Any unharvested production where table grape cultural practices were discontinued following an appraisal; and

(d) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Not harvested before the harvest of grapes becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

(4) If any grapes are harvested before normal maturity, the production of such grapes will be increased by the factor obtained by dividing the price per lug received for such grapes by the price per lug for full matured grapes.

(5) We may determine the amount of production of any unharvested grapes on the basis of field appraisals conducted after discontinuance of harvest or the end of the insurance period.

(6) If you elect to exclude hail and fire as insured causes of loss and the grapes are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. You must not abandon any acreage to us

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

We have a policy for paying your indenmity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim.

We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and

published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indenmity will vary with the rate announced by the Secretary of the Treasury.

J. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the date insureance attaches for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity.

You may assign to another party your right to an indemnity for the crop year, only in writing on our form, and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and Access to Farm.

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all grapes produced on each unit including separate records showing the same ir.formation for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b.This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c.This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are January 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than a individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by October 31 preceding the concellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms.

For the purposes of table grape crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding table grape insurance in the county.

b. "Cluster thinning and removal" means removing parts of a cluster or the entire cluster of grapes.

c. "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right-of-way will also be considered contiguous.

d. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

e. "Crop year" means the period beginning with the date insurance attaches and extending through normal harvest time and is designated by the calendar year in which the grapes are normally harvested.

f. "Direct Mediterranean fruit fly damage" means the actual physical damage to the grapes on the unit which causes such grapes to be unmarketable and will not include unmarketability of such grapes as a direct result of a quarantine, boycott, or refusal to accept the grapes by any entity without regard to actual physical damage to such grapes.

g. "Harvest" means picking the grapes from the vines.

h. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

i. "Insured" means the person who submitted the application accepted by us.

j. "Loss ratio" means the ratio of indemnity to premium.

k. "Lug" means 22 pounds of table grapes in the Coachella Valley, California, district, and 23 pounds in all other California districts.

l. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

m. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

n. "Table grapes" means the grapes which are grown for commercial sales as fresh grapes, on acreage which the cultural practices to produce fresh marketable grapes were carried out.

o. "Tenant" means a person who rents land from another person for a share of the grapes or a share of the proceeds therefrom.

p. "Unit" means all insurable acreage of grapes in the county located on contiguous land on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the grapes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any

acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings.

The descriptive headings of the various policy terms and conditions are formulatred for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with the Appeal Regulations, (7 CFR Part 400-Subpart J).

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on July 15, 1986.

Edward Hews,

Deputy Manager.

[FR Doc. 86-18433 Filed 8-14-86; 8:45 am]

BILLING CODE 3410-08-M

Soil Conservation Service

7 CFR Part 656

Procedures for the Protection of Archeological and Historical Properties Encountered in SCS-Assisted Programs

AGENCY: Soil Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Soil Conservation Service (SCS) removes and reserves six sections of its regulations protecting archeological and historic properties. The purpose of this action is to eliminate procedures that are inconsistent with current requirements.

DATE: Comments are due by October 14, 1986.

ADDRESSES: Gail Updegraff, Director, Economics and Social Sciences Division, USDA/SCS, P.O. Box 2890, Washington, DC 20013-2890.

FOR FURTHER INFORMATION CONTACT: Gail Updegraff, Director, Economics and Social Sciences Division, or Diane Gelburd, National Cultural Resources Specialist, Economics and Social Sciences Division, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013, (202) 447-2307, or Ronald Anzalone, Advisory Council on Historic Preservation, The Old Post Office Building, 1100 Pennsylvania Avenue NW., Room 809, Washington, DC 20004, (202) 785-0505.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA criteria established to carry out Executive Order 12291, Improving Government Regulations, and has been classified "not significant." On July 18, 1977, SCS published in the **Federal Register** (42 FR 36804) its final rule "Procedures for the Protection of Archeological and Historical Properties Encountered in SCS-Assisted Programs" (7 CFR Part 656). Amendments to this rule were published in the **Federal Register** on June 19, 1978, and on June 23, 1979 (43 FR 26277 and 44 FR 27158). Proposed revisions of this rule were published in the **Federal Register** on January 29, 1981 (46 FR 9611) on August 20, 1982 (47 FR 36592) and on December 9, 1983 (48 FR 55123).

This action is being taken to ensure compliance with applicable statutes and regulations and the regulations of the Advisory Council on Historic Preservation (36 CFR Part 800) for implementing section 106 of the National Historic Preservation Act, as amended (16 U.S.C. 470f). When 36 CFR Part 800 is revised as a final rule, SCS will work with the Advisory Council on Historic Preservation to revise this rule, if necessary.

The determination has been made pursuant to the provisions of Excutive Order 12291 that the preparation of a regulatory impact analysis is not required. The rule is not considered major under Executive Order 12291. The regulation concerns agency policy and guidelines.

It has also been determined, pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534), that the rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 656

Historic preservation, Soil conservation.

Accordingly, the Soil Conservation Service proposes to amend Part 656 as follows:

PART 656—[AMENDED]

1. The authority citation for Part 656 is revised to read as follows:

Authority: Pub. L. 83-523, 74 Stat. 220, as amended (16 U.S.C. 469 et seq.); PL 89-665, 80 Stat. 915, as amended (16 U.S.C. 470 et seq.); 7 CFR 2.62.

§§ 656.4-656.9 [Removed and Reserved]

2. Sections 656.4, 656.5, 656.6, 656.7, 656.8. and 656.9 are proposed to be removed and reserved.

Dated: July 29, 1986.

Wilson Scaling

Chief.

[FR Doc. 86-17677 Filed 8-14-86; 8:45 am]

BILLING CODE 3410-16-M

Agricultural Marketing Service

7 CFR Part 987

Domestic Dates Produced or Packed in Riverside County, CA; Withdrawal of Proposed Amendment of Date Expenses and Rate of Assessment for 1985-86 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposal.

SUMMARY: This document withdraws a proposal that would have authorized an increase in expenses for the California Date Administrative Committee and an increase in the rate of assessment for the 1985-86 crop year. The expenses would have been increased from $26,050 to $176,050, and the assessment rate would have been increased from 8 cents to $1.00 per hundredweight of assessable dates. The changes were proposed to enable the date industry to conduct a market research, promotion, and paid advertising program. The committee locally administers the Federal marketing order covering dates of domestic production. After extensive review of the comments received and other information, the Department has determined that a retroactive assessment increase of the magnitude proposed could cause adverse economic hardship on some. date handlers, and that the proposal should be withdrawn.

EFFECTIVE DATE: August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250; Telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This document withdraws a proposal published in the **Federal Register** on May 30, 1986 (51 FR 19558), to increase the expenses of the California Date Administrative Committee and increase the rate of assessment for the 1985-86 crop year. Comments were requested until June 9, 1986. Thirteen comments were received; six comments supported the proposal, six comments opposed the

proposal, and one comment was neither for nor against it.

The proponents favored the retroactive increase as a means of helping the industry overcome its severe oversupply problem. There is a need for corrective action to improve the economic condition of the California date industry. However, opponents pointed out that a retroactive assessment increase of this magnitude could result in economic hardship on those handlers who have sold all or most of their 1985 crop because these handlers would not be able to make up for the increased assessment rate.

After consideration of all relevant matter presented, including the comments received and other information, it is found that implementation of the proposal could have an adverse financial impact on some handlers at this point in the season. The potential for adverse economic impact is a major concern that cannot be disregarded. Therefore, the proposed amendment to 7 CFR 987.330, published in the **Federal Register** on May 30, 1986 (51 FR 19558), is hereby withdrawn.

Dated: August 8, 1986

Joseph A. Gribbin

Director, Fruit and Vegetable Divisions.

[FR Doc. 86-18371 Filed 8-14-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1007, 1011, 1046, 1093, 1094, 1096, and 1098

[Docket No. AO-366-A28, et al.]

Milk in the Georgia and Certain Other Marketing Areas: Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Parts	Marketing area	Docket Nos.
1007	Georgia	AO-366-A28
1011	Tennessee Valley	AO-251-A31
1046	Louisville-Lexington-Evansville	AO-123-A57
1093	Alabama-West Florida	AO-386-A7
1094	New Orleans-Mississippi	AO-103-A49
1096	Greater Louisiana	AO-257-A36
1098	Nashville, Tennessee	AO-184-A51

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals by a cooperative association, dairy processors and processor associations to amend 7 southeastern Federal marketing orders. Proponents indicate that the proposals are designed to provide payments under the orders for marketwide services.

DATE: The hearing will convene at 9:30 a.m., local time, on September 8, 1986.

ADDRESS: The hearing will be held at the Colony Square Hotel, Peachtree and 14th Street NE., Atlanta, Georgia 30361 (404/892-6000).

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of section 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Colony Square Hotel, Peachtree and 14th Street NE., Atlanta, Georgia 30361 (404/892-6000), beginning at 9:30 a.m. on September 8, 1986, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Georgia and certain other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders. In general, the Department is interested in obtaining responses to the following questions:

1. What is the need for the proposed marketwide service payment or credit?

2. What is the cost justification for the payment or credit for the proposed marketwide service?

3. How is the proposed marketing service of marketwide benefit?

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1007, 1011, 1046, 1093, 1094, 1096, and 1098

Milk marketing orders, Milk, Dairy products.

The authority citation for Parts 1007, 1011, 1046, 1093, 1094, 1096, and 1098 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Dairymen, Inc

Proposal No. 1

Revise the Georgia, Tennessee Valley, Louisville-Lexington-Evansville, Alabama-West Florida, New Orleans-Mississippi, Greater Louisiana and Nashville, Tennessee milk orders as follows:

A. Revise section 9 of the order (handler definition) by adding a new paragraph to read as follows:

Any cooperative association with respect to milk, excluding the milk of producers delivered to a handler pursuant to paragraph (a) or (c) of this section, that it receives for its account for delivery to a pool plant of another handler, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk.

B. In paragraph (b) of section 12 of the order (producer definition), delete the provision that reads as follows:

Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such order.

C. In section 30 of the order (reports of receipts and utilization), revise paragraph (a)(4) to read as follows:

(4) Receipts of other source milk, including milk received from a cooperative association as a handler described in section 9 (paragraph set forth in proposal 1A)."

D. In section 42 of the order (classification of transfers and diversions), revise paragraph (b)(2) by adding the words "or diverted" after the words "If transferred".

E. Revise section 45 of the order (market administrator's reports and announcements concerning classification), by adding a new paragraph (e) to read as follows:

(e) Report to the cooperative association as a handler pursuant to section 9 (paragraph set forth in proposal 1A), as soon as possible after the report of receipts and utilization for the month is received from a handler who has received, for the account of the cooperative association, fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant tc section 44 on the basis of such report, and thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

F. In section 60 of the order (handler's value of milk for computing uniform price), delete the text in paragraph (g) and substitute therefor the following paragraphs (for the New Orleans-Mississippi order, the paragraph to be deleted is paragraph (h) and the following paragraphs are to be substituted therefor):

(g) For a handler who regularly (by delivery of a load of milk or more on 14 or more days during the month) supplies two or more pool distributing plants, other than their own, subtract an amount computed as follows:

(1) On or before the 25th day of July of each year the market administrator shall compute a seasonal balancing base for each qualified handler for each of the following twelve months, beginning with the month of August, as follows:

(i) Compute a marketwide seasonal index of producer milk, excluding fluid cream products, used to produce Class III manufactured dairy products at pool plants or transferred or diverted for such use to nonpool plants as follows:

(*a*) Determine such volumes for each of the 36 months ending with the immediately proceeding month of June;

(*b*) Determine a daily average for each month using the data for each month for the three year period;

(*c*) Divide the daily average for each month of the year by the daily average for the three consecutive months of lowest Class I utilization of producer milk; and

(*d*) The resulting amounts computed for each month of the year shall be the marketwide seasonal index of producer milk.

(ii) Compute for each qualified handler a seasonal balancing base for each month as follows:

(*a*) Determine the handler's daily average volume of producer milk, excluding fluid cream products, used to produce Class III manufactured dairy products at pool plants or transferred or diverted for such use at nonpool plants for the same three months as determined in subparagraph (i)(c) of this section; and

(*b*) Multiply the result by the seasonal index, as determined in subparagraph (i)(d) of this section, for each month.

(2) Multiply the difference (positive difference only) between the handler's seasonal balancing base for the month, as determined in subparagraph (ii) of this section, and the handler's actual volume of producer milk, excluding fluid cream products used to produce Class III manufactured dairy products at pool plants or transferred or diverted for such use at nonpool plants during the month by 66 cents per hundredweight under the Tennessee Valley, Louisville-Lexington-Evansville, and Nashville, Tennessee orders; 74 cents per hundredweight under the Georgia and Alabama-West Florida orders; and 97 cents per hundredweight under the New Orleans-Mississippi and Greater Louisiana milk orders.

(h) During any of the months of March through June or the period of December 20–31, for a handler who regularly (by delivery of a load or more of milk on 14 or more days during the month) supplies two or more pool distributing plants, other than their own, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred or diverted from a pool plant to a nonpool plant and classified as Class II milk pursuant to section 42(3) or (d)(2) by a rate for each truckload of milk so moved that is equal to 3.0 cents per hundredweight for each 10 miles or fraction thereof that the nonpool plant is located more than 75 miles (as determined by the market administrator) from the nearest of the following locations: for the Georgia order, the city hall in Atlanta; Georgia; for the Tennessee Valley order, the city hall in Bristol, Virginia, Knoxville or Chattanooga, Tennesee; for the Lousiville-Lexington-Evansville order, the city hall in Louisville or Lexington, Kentucky, or Evansville, Indiana; for the Alabama-West Florida order, the city hall in Birmingham, Alabama; for the New Orleans-Mississippi order, the city hall in New Orleans or Kentwood, Louisiana, or Jackson or Grenda, Mississippi; for the Greater Louisiana order, the city hall in Baton Rouge, Lake Charles, Shreveport, or Monroe, Louisiana; for the Nashville, Tennesse order, the city hall in Nashville, Tennessee; the transferor plant; or for diversions, the pool plant of last receipt for the major portion of milk on the load or the courthouse of the county where the major portion of the milk so diverted was produced. No credit shall apply to the total quantity of milk so move to a given nonpool plant by a handler during the month if any portion of the milk is assigned to Class I.

(i) During the months of August through February, whenever the combined Class I utilization of Producer milk for the Upper Florida (Part 1006), Tampa Bay (Part 1012), Southeastern Florida (Part 1013), Louisville-Lexington-Evansville (Part 1046), Paducah, Kentucky (Part 1099), Nashville, Tennessee (Part 1098), Tennesse Valley (Part 1011), Georgia (Part 1007), Alabama-West Florida (Part 1093), New Orleans-Mississippi (Part 1094), and the Greater Louisiana (Part 1096) orders for the ond preceding month exceeds the minimum percent as specified below, for a handler who regularly (by delivery of a load or more of milk on 14 or more days of delivery during the month) supplies two or more pool distributing plants, other than their own, subtract the amount obtained by miltiplying the pounds of bulk fluid milk products that were transferred or diverted to the handler's pool plant, or to pool plants for the account of a cooperative association as a handler pursuant to section 9 (paragraph set forth in proposal 1A) from an other order plant on loads classified pursuant to tion 44(a)(12), by a rate equal to 3.0 cents per hundredweight for each 10 miles or fraction thereof distance between the shipping plant and receiving plant, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

Month	Combined utilization 2nd proceeding month
August	[1] 79
September	[1] 75
October	[1] 80
November	[1] 82
December	[1] 83
January	[1] 83
February	[1] 77

[1] Percent or more.

(j) For a cooperative association as a handler pursuant to section 9 who regularly (by delivery of a load or more of milk on 14 or more days during the month) supplies two or more pool distributing plants, other than their own, subtract the amount obtained by multiplying the pounds of bulk fluid milk products on loads that were transferred or diverted to other order plants

pursuant to section 42(2) or transferred or diverted to other nonpool plants pursuant to section 42(d)(2), and which at least 50 percent of the volume on the load was classified as Class I, by 35 cents per hundredweight.

G. Add a new tion 89 to each of the orders to read as follows:

.89 Cooperative payments for marketwide services.

Payment shall be made to qualified cooperatives under the conditions, in the manner, and at the rate set forth in this section.

(a) Designated cooperatives. A cooperative may submit an application to the market administrator for payment under the provisions of this section. In accordance with the requirements of the market administrator, such application shall include a written description of the applicant's program for the performance of marketwide services. The application shall contain a statement by the applicant that it will perform the required marketwide services for which it is applying for payment. An application shall be approved by the market administrator only if he determines that;

(1) The applicant cooperative has as members not less than 15 percent of all producers defined in section 12; and

(2) The applicant cooperative demonstrates that it has the ability to perform marketwide services for which application is made and that such services will be performed.

(b) Notice of designation or denial; effective date. Upon determination by the market administrator that a cooperative shall be designated to receive payment for performance of the marketwide services, he shall transmit such determination to the applicant cooperative and publicly announce the issuance of the determination. The determination shall be effective with respect to milk delivered on and after the first day of the month following issuance of the determination. If the market administrator determines that the cooperative is not qualified to receive such payment he shall promptly notify the applicant and specifically set forth in such notice his reasons for denial of the application.

(c) Requirements for continued designation. From time to time and in accordance with the requirements as specified by the market administrator, each designated cooperative must demonstrate to the market administrator that it continues to meet the designation requirements for the payment and is fully performing the marketwide services for which it is being paid.

(d) Marketwide services. Each cooperative shall perform the marketwide services enumerated in this paragraph. Such services shall include:

(1) Analyzing milk marketing problems and their solutions, conducting market research and maintaining current information as to all market developments, preparing and assembling statistical data relative to prices and marketing conditions, and making an economic analysis of all such data;

(2) Determining the need for the formulation of amendments to the order and proposing such amendments or requesting other appropriate action by the Secretary or the market administrator in light of changing conditions;

(3) Participating in proceedings with respect to amendments to the order, including the preparation and presentation of evidence at public hearings, the submission of appropriate briefs and exceptions, and also participating, by voting or otherwise, in referenda relative to amendments;

(4) Participating in the meetings called by the market administrator, such as meetings with respect to rules and regulations issued under the order, including activities such as the preparation and presentation of data at such meetings and briefs for submission thereafter; and,

(5) Conducting a comprehensive education program among producers and keeping them informed for participation in the activities under the regulatory order.

(e) Rate, time, and method of payment. Subject to the provisions of paragraph (f) of this section, the market administrator, on or before the 15th day of each month, shall make payment out of the producer-settlement fund, or issue equivalent credit therefore, to each cooperative which is designated for such payment for marketwide services. The payment or credit to the cooperative shall be at a rate of 3 cents per hundredweight of milk reported by the cooperative or proprietary handlers to have been received during the preceding month from its member producers. Such payment or credit is subject to adjustment upon verification by the market administrator.

(f) Cancellation of designation.

(1) The market administrator shall issue an order canceling the designation of a previously designated cooperative for payment authorized pursuant to this section and such payment shall not thereafter be made to it if he determines that:

(i) The cooperative no longer complies with the requirements of this part; or,

(ii) The cooperative has failed to make reports or furnish records pursuant to this section.

(2) An order of the market administrator canceling the designation of a cooperative shall not be issued until after the cooperative has received 30 days prior notice specifying the reasons for the proposed cancellation.

(3) A cancellation order issued by the market administrator shall set forth the findings and conclusions on the basis of which it is issued.

(g) Reports and records. Each designated cooperative shall:

(1) Make such reports to the market administrator as may be requested by him for the administration of the provisions of this section; and,

(2) Maintain and make available to the market administrator or his representative such records as will enable the market administrator to verify such reports.

I. In section 61 of the order (computation of uniform price), delete the provision "4 cents nor more than 5" wherever it appears and substitute therefor the provision "7 cents nor more than 8".

Proposed by Milk Industry Foundation

If marketwide service payments are adopted under Federal Milk Marketing Orders as a result of this proceeding, then the Milk Industry Foundation supports adoption of proposals 2 through 5:

Proposal No. 2

Amend the "handler's value of milk for computing uniform price" provisions of the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; New Orleans-Mississippi; Greater Louisiana; and Nashville, Tennessee orders to provide for a payment of $.30 per hundredweight to handlers for all producer milk received or diverted on Saturdays and Sundays.

Proposal No. 3

Amend the "handler's value of milk for computing uniform price" provisions of the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Flordia; New Orleans-Mississippi; Greater Louisiana; and Nashville, Tennessee orders to provide for the months of September 1986 through February 1987 and for the months of August 1987 through February 1988 a hauling credit on Class I supplemental milk purchases from plants fully regulated under another Federal Order. The amount of the hauling credit would be equal to 2.6

cents per hundredweight for each ten miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant and the Class I differential applicable at the receiving plant and the Class I differential applicable at the shipping plant. The hauling credit would apply only to distances greater than normal market distances for hauling milk in each of the respective orders. To qualify for hauling credit, the supplemental milk purchased must be allocated at the lower of the utilization of the Order or the plant of receipt (no credit should apply to milk allocated to Class II or Class III uses).

Proposal No. 4

Amend the "handler's value of milk for computing uniform price" provisions of the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; New Orleans-Mississippi; Greater Louisiana; and Nashville, Tennessee orders to provide for the months of March through June in calendar years 1987 and 1988 and the period of December 20–31 in calendar years 1986 and 1987 for a hauling credit of 2.6 cents per hundredweight for each 10 miles or fraction thereof on bulk fluid milk that was transferred or diverted from a pool plant to a nonpool plant and classified as Class II or Class III milk. The hauling credit would apply only to those distances in excess of the distance of normal outlets for surplus milk associated with pool plants in each of the respective orders. No credit shall apply to the total quantity of milk so moved to a given nonpool plant by a handler during the month if any portion of the milk is assigned to Class I.

Proposal No. 5

Amend the "marketing service deduction" provisions in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; New Orleans-Mississippi; Greater Louisiana; and Nashville, Tennessee orders to provide that if 3 cents per hundredweight, or any amount, is taken out of the producer-settlement fund for payment to cooperatives for marketwide services, such as economic analysis and the dissemination of information, then an equal amount should be taken out of the producer-settlement fund for use by the market administrator so that the non-member market service assessment is reduced by an equal amount.

Proposal by Kinnett Dairies, Inc.

Proposal No. 6

Revise § 1007.60 of the Georgia milk order to include a credit to any handler as now defined in the order for the handling and disposal of the increased seasonal production of producers. Such credit should be based upon the actual pounds of excess milk received and disposed of by the handler for Class II or Class III uses.

Proposal No. 7

A transportation credit should also be allowed under § 1007.60 fo the Georgia order for any handler who brings in supplemental milk to supply the market's needs.

Proposed by the Trade Association of Propriety Plants

Proposal No. 8

Marketing service payments to handlers under the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; New Orleans-Mississippi; Greater Louisiana and Nashville, Tennessee; milk orders shall be limited to transportation credits for bulk fluid milk movement amounting to the difference between credits allowed under such order, if any, and 3 cents per hundredweight per 10 miles in the following cases:

(a) Movement of milk for fluid milk purposes from supply plants (including reload stations) to distributing plants within a marketing area: *Provided* That such milk movement receives prior approval of the market administrator.

(b) Movement of supplemental milk when needed from supply plants of another Federal order market minus the difference between the Class I price of the transferee order and transferor order: *Provided,* That such milk movement receives prior approval of the market administrator.

(c) Movement of surplus milk beyond 75 miles to the closest plant with available manufacturing capacity during March-June and December 20–31: *Provided,* That such milk movement receives prior approval of the market administrator.

Proposed by National Independent Dairy-Foods Association

Proposal No. 9

If any amendments providing for marketwide payments or credits are adopted, then amend Federal milk marketing orders for Georgia, Part 1007; Tennessee Valley, Part 1011; Louisville-Lexington-Evansville, Part 1046; Alabama-West Florida, Part 1093; New Orleans-Mississippi, Part 1094; Greater Louisiana, Part 1096; and Nashville, Tennessee, Part 1098; by adding new sections as follows:

A. The market administrator shall find and determine any over-order market prices and total over-order amounts charged to and paid by each handler each month and shall find and determine the services paid for by these prices and amounts.

B. No balancing payments, hauling credits, payments for sales of surplus milk nor market service payments shall be made under the marketwide payments provisions of the order to any cooperative association which charges and receives any over-order prices and over-order amounts for such services during any month.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 10

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of the hearing and the orders may be procured from the Market Administrators of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangments may be made with the reporter at the hearing.

From the time that a hearing notice is issued until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator of each of the 7 orders.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

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

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–18484 Filed 8–14–86; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0577]

Truth in Lending; Right of Rescission

Correction

In FR Doc. 86-17694, beginning on page 28245, in the issue of Wednesday, August 6, 1986, make the following correction:

On page 28245, third column, fourth line, "is" should read "if".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-114-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking (NPRM).

SUMMARY: This document withdraws a NPRM which proposed to amend an existing airwothiness directive AD 84-02-05. The NPRM would have removed the Boeing Model 747 airplanes equipped with Rolls Royce RB211-524 engines from the requirement of installation of a low N1 caution indication in the cockpit. Since issuance of the NPRM, a Lockheed Model L-1011 airplane equipped with Rolls Royce RB211-22B engines, which are similar in type design to the RB211-524 engines, experienced a dual engine powerloss while operating in icing conditions. As a result, the FAA has determined that the low N1 caution indication is necessary on Boeing Model 747 airplanes equipped with Rolls Royce RB211-524 engines, therefore, the NPRM is withdrawn.

DATES: This withdrawal is effective October 6, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Kanji K. Patel, Propulsion Branch, ANM-140S; telephone (206) 431-2973). Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A revision to the limitations section of the Airplane Flight Manual (AFM) and installation of a low N1 rpm caution indication was required on all Boeing Model 747 airplanes equipped with Pratt and Whitney JT9D, General Electric CF6 and Rolls Royce RB211-524 engines by Airworthiness Directive AD 84-02-05, Amendment 39-4798. The low N1 indication on pilot's forward panel was intended to caution the crew of engine operations below the required N1 rpm while operating in icing conditions and the engine anti-icing system turned "on." Engine operations in icing conditions below the required N1 rpm, could lead to loss of engine power or engine shut down.

Following issuance of the AD, the FAA determined that the Model 747 airplane equipped with Rolls Royce RB211-524 engines did not require installation of a low N1 caution indication. Based on this determination, a Notice of Proposed Rulemaking (NPRM), Docket No. 85-NM-114-AD, to amend AD 84-02-05, Amendment 39-4798, was published in the **Federal Register** on November 4, 1985 (50 FR 45829). This NPRM proposed removal of the Boeing Model 747 airplanes equipped with Rolls Royce RB211-524 engines from requirement of installation of a low N1 caution indication by amending AD 84-02-05

Since issuance of the NPRM, a Lockheed Model L-1011 airplane equipped with Rolls Royce RB211-22B engines, which are similar in type design to the RB211-524 engines, experienced a dual engine powerloss while operating in icing conditions. An investigation of the incident concluded that the probable cause of the incident was erosion of the over-fuel margin due to ingestion of extremely large amounts of water coincident with retarding of the throttles to flight idle, which is approximately 40% N1 rpm for the Model L-1011.

Based on the above described incident and the probable cause of the incident, it was concluded by the FAA that the previous determination to remove the Boeing Model 747 airplanes equipped with Rolls Royce RB211-524 engine from installation of a low N1 caution indication required by AD 84-02-05 was incorrect. Therefore, the NPRM Docket No. 85-NM-114-AD is withdrawn.

Withdrawal of this Notice of Proposed Rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, or commit the agency to any course of action in the future.

Since this action only withdraws a Notice of Proposed Rulemaking (NPRM), it may be made effective in less than 30 days. It is neither a proposed nor final rule, and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Withdrawal

PART 39—[AMENDED]

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

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

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

2. By withdrawing the proposed airworthiness directive published in the **Federal Register** on November 4, 1985 (50 FR 45829), FR Doc. 85-26202. Issued in Seattle, Washington, on August 8, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-18401 Filed 8-14-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-NM-54-AD]

Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal and reissuance.

SUMMARY: This action withdraws and reissues a NPRM applicable to certain Airbus Industrie Model A300 B2 and B4 series airplanes that would have required inspections for cracks and modification and repairs, as necessary. The manufacturer and one operator pointed out that the B4 model was covered by service bulletins different from those called out in the NPRM. The manufacturer has also revised the service bulletin applicable to the B2 model. There have been reports of cracks in the flanges and in certain fastener holes in fuselage frame 47, which, if not detected and repaired, could lead to rapid decompression of the airplane.

DATES: Comments must be received October 6, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103),

Attention: Airworthiness Rules Docket No. 85–NM–54–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, (Attention: ANM–103) Attention: Airworthiness Rules Docket No. 85–NM–54–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), the French civil aviation authority, has issued three Consigne de Navigabilités, which mandate compliance with Airbus Industrie (AI) Service Bulletins A300–53A193, A300–53–194, A300–53–196, A300–53–198, A–300–53–199, and A300–53–200. These service bulletins prescribe inspections, and corrective actions, as necessary, of the following in-service difficulties:

A. Cracks have been reported in fastener hole A of fuselage frame 47 on B2 series airplanes which have accumulated between 7,000 and 17,000 landings. The fatigue test article revealed that a crack had also developed in fastener hole B of fuselage frame 47. This crack was discovered after 35,500 simulated landings were accumulated. AI Service Bulletin A300–53–194, Revision 2, dated July 8, 1985, prescribes inspections, and modification and repairs, as necessary.

B. During routine maintenance of a B2 series airplane, cracks were discovered in the inboard flange of fuselage frame 47. AI Service Bulletin A300–53A193, Revision 1, dated November 5, 1984, prescribes inspections and repair, as necessary.

C. Sampling inspection on B4 series airplanes, which had accumulated between 6,260 and 11,200 landings, revealed cracks in fastener holes A, E, and L in fuselage frame 47. AI Service Bulletins A300–53–199 and A300–53–200, both dated July 8, 1985, prescribe inspections and repairs, as necessary.

An NPRM which would have required compliance on both B2 and B4 series airplanes with two of the above service bulletins (A300–53A193 and A300–53–194) was published in the **Federal Register** on July 1, 1985 (50 FR 27009). Two comments were received. Both commenters stated that the B4 model was covered by separate service bulletins, and that it would be appropriate to inspect the B2 and B4 models in accordance with the applicable service bulletins. The FAA agrees with the comments, and has determined the NPRM should be withdrawn and a new NPRM issued, which would require compliance with the latest revisions of the appropriate service bulletins.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the corrective actions mentioned above.

It is estimated that 34 U.S. registered airplanes would be affected by this AD, that it would take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $54,400.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model A300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Withdrawal

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

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

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

2. By withdrawing the proposed airworthiness directive published in the **Federal Register** on July 1, 1985 (50 FR 27009), FR Doc. 85–15662.

The Proposed Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A300 B2 and B4 series airplanes serial numbers as listed in each applicable service bulletin, certificated in any category. To prevent propagation of cracks in fuselage frame 47, accomplish the following within the time period specified in each of the following paragraphs after the effective date of this AD, or prior to reaching the threshold number of landings indicated in each paragraph below, whichever occurs later, unless previously accomplished:

A. *For B2 Series Airplanes:*

1. Prior to the accumulation of 6,000 landings, or within the next 300 landings after the effective date of this AD, whichever occurs later, inspect fastener holes A and B of frame 47, lefthand and righthand, in accordance with the accomplishment instructions of Airbus Industrie (AI) Service Bulletin A300–53–194, Revision 2, dated July 8, 1985. Repair cracks in accordance with the service bulletin. If no cracks are found, cold work the holes and install interference fit fasteners in accordance with the service bulletin.

2. Reinspect in accordance with AI Service Bulletin A300–53–196, dated February 4, 1985, at intervals not to exceed 6,000 landings.

3. Accomplishment of the modifications described in AI Service Bulletin A300–53–198, Revision 1, dated November 12, 1985, constitutes terminating action for the inspection requirements of paragraphs A.1., and A.2., above.

B. *For B2 Series Air Planes:*

1. Prior to the accumulation of 5,000 landings, or within the next 300 landings after the effective date of this AD, whichever occurs later, inspect frame 47, lefthand and righthand, in accordance with the accomplishment instructions of AI Service Bulletin A300–53–193, dated March 14, 1984.

2. If cracks are found, repair in accordance with the service bulletin.

3. If no cracks are found, further inspections are not required.

C. *For B4 Series Airplanes:*

1. Prior to the accumulation of 7,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect frame 47, lefthand and righthand, fastener holes in accordance with AI Service Bulletin A300–53–200 dated July 8, 1985.

2. If cracks are found, repair in accordance with the service bulletin.

3. If no cracks are found, reinspect at intervals not to exceed 2,000 landings.

4. Accomplishment of the inspection and modification described in AI Service Bulletin A300–53–199 dated July 8, 1985, constitutes terminating action for the inspection requirements of paragraphs C.1., and C.2., above.

D. 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.

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

All persons affected by this proposed directive, who have not already received the appropriate service documents from the manufacturer, may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 8, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–18400 Filed 8–14–86; 8:45 am]

BILLING CODE 4910–03–M

---

14 CFR Part 39

[Docket No. 86–CE–30–AD]

Airworthiness Directives; Cessna 100 and 200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Cessna 100 and 200 Series airplanes. This AD would require modification of the airplanes by installing bolts, nuts and cotter pins on engine controls incorporating ball type rod ends in place of existing self locking nuts and undrilled bolts. Reports have been received of forced landings believed to have been caused by engine power interruption or fuel starvation due to loss of throttle and mixture control attachment. The proposed actions will help preclude engine power interruption and fuel starvation due to loss of engine control attachment.

DATES: Comments must be received on or before October 6, 1986.

ADDRESSES: Cessna Service Letter SE79–6 dated April 16, 1979, applicable to this AD may be obtained from Cessna Aircraft Company, Customer Services, Post Office Box 1521, Wichita, Kansas 67201, or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–30–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, Aircraft Certification Office, ACE–140W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86–CE–30–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

As a result of a recent accident, the National Transportation Safety Board (NTSB) has issued a safety recommendation on the Cessna engine control attachment. The FAA has received additional reports of accidents and incidents of engine power interruption and fuel starvation resulting in engine power loss and forced landings involving Cessna 100 and 200 series airplanes. The fuel starvation and engine power interruption is considered to have occurred because the engine control attachments became separated. Repeated use of the self locking nuts results in loss of nut retention capability. Subsequently, the control attach bolt separates from the control. Cessna has developed a control attachment modification which will

preclude this situation. The FAA has determined that the Cessna modifications are needed to correct an unsafe condition and an AD is needed. Since the condition described is likely to exist or develop in other Cessna 100 and 200 series airplanes of the same design, the FAA is proposing an AD that would require modification of the engine control system by the installation of bolts, nuts and cotter pins on those airplanes not presently so equipped.

The FAA has determined there are approximately 80,000 airplanes affected by the proposed AD. The cost of modifying these airplanes are required by the proposed AD is estimated to be $30 per airplane. The total cost is estimated to be $2,400,000, to the private sector.

The cost is so small that compliance with the proposal will not have a significant financial impact on any small entities owning affected airplanes. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Cessna: Applies to the follow model and serial number single engine airplanes certificated in any category manufactured thru Model year 1978 equipped with ball type rod ends on the engine controls:

Models	Serial Nos.
150C thru 150M	S/N 15059701 thru 15079405.
A150K thru A150M	S/N A1500001 thru A1500734.
152	S/N 15279406 thru 15282031.
A152	S/N A1520735 thru A1520808.
172D thru 172N	S/N 17249545 thru 17271034.
R172K	S/N 1722000 thru R1722929.
P172	S/N P17257120 thru P17257188.
177 thru 177B	S/N 17700001 thru 17702752.
177RG	S/N 177RG0001 thru 177RG1366.
180F thru 180K	S/N 18051184 thru 18053000
182F thru 182Q	S/N 18254424 thru 18266590.
R182	S/N R18200001 thru R18200583.
185B thru 185E	S/N 185-0513 thru 185-1599.
A185E, A185F	S/N 18501600 thru 18503683.
188, A188	S/N 188-0001 thru 188-0572.
A188A, 188B	S/N 18800573 thru 18803296.
A188B	S/N 18800967T thru 18803296T.
205, 205A	S/N 205-0001 thru 205-0577.
206, U206	S/N 206-0001 thru 206-0275.
U206A thru U206G	S/N U206-0276 thru U206-1444.
TU206A thru TU206G	S/N U20601445 thru U20604649.
P206, P206A thru P206E.	S/N P206-0001 thru P206-0603.
TP206A thru TP206E	S/N P20600604 thru P20600647.
207, 207A, T207, T207A.	S/N 20700001 thru 20700482.
210C thru 210M	S/N 21058086 thru 21062954.
T210F thru T210M	S/N T210-00001 thru T210-0454.
P210N	S/N P21000001 thru P21000150.
F150F thru 150M	S/N F150-0001 thru F150-0529. S/N F15000530 thru F15001428.
FA150K, FA150L	S/N FA1500001 thru FA1500120.
FRA150L, FRA150M	S/N FRA1500121 thru FRA1500336.
F152	S/N F15201429 thru F15201528.
FA152	S/N FA1520337 thru FA1520347.
FP172	S/N FP172-0001 thru FP172-0003.
F172D thru F172N	S/N F172-0001 thru F172-0654. S/N F17200655 thru F17201749.
FR172E thru FR172K	S/N FR17200001 thru FR17200630.
F177RG	S/N F177RG0001 thru F177RG0177.
F182P, F182Q	S/N F18200001 thru F18200094.
FR182	S/N FR18200001 thru FR18200020.
R172E thru R172H	S/N R172-0001 thru R172-0409. S/N R1720410 thru R1720625.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent engine power interruption due to loss of attachment of the engine controls, accomplish the following:

(a) Modify the engine controls installation by installing a drilled steel bolt, AN310 type castellated nut and a steel cotter pin in accordance with Cessna Single Engine Customer Care Service Information Letter SE79–6.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Cessna Aircraft Company, Customer Services, Post Office Box 1521, Wichita, Kansas 67201, or the FAA, Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 8, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86–18398 Filed 8–14–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–CE–31–AD]

Airworthiness Directive; Pilatus Britten-Norman Limited, Models BN–2T Islander Airplanes Incorporating Engine Vibration Isolators Manufactured by Barry Controls

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to all Pilatus Britten-Norman Limited Models BN–2T Islander airplanes incorporating engine vibration isolators manufactured by Barry Controls, which could develop cracks and deterioration in the elastomer care assemblies, and/or cracks on the isolator mounting brackets, at the intersection of each main rib with the elastomer core location rim. This AD defines the inspections and corrective actions for both the isolator brackets and the elastomer core assemblies. The action will eliminate the possibility of high engine vibrations and possible propeller whirl flutter, which could result in loss of the airplanes.

DATE: Comments must be received on or before December 23, 1986.

ADDRESSES: Pilatus Britten-Norman Limited, Mandatory Service Bulletin (MSB) No. BN/–2SB.172, Issue 2 dated June 2, 1986, applicable to this AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, England, or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–31–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o America Embassy, Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Harvey A. Chimeline, Foreign FAR 23 Section,

Central Region, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filled in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 86-CE-31-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Service experience has shown that on Pilatus Britten-Norman Limited, Model BN-2T Islander airplanes incorporating engine vibration isolator mounting brackets manufactured by Barry Controls, Barry Part No. 44-9115-0100, are cracking at the intersection of each main rib with the elastomer core location rim. In addition, some of the elastomer core assemblies, Barry Part No. R20700-2, are developing cracks in the elastomer itself. Failure of these vibration isolators will increase engine vibration levels into the airframe and possibly induce propeller whirl flutter. As a result, Pilatus Britten-Norman Limited has issued Service Bulletin No. BN-2/SB.172, Issue 2 dated June 2, 1986, which defines inspections, and introduces corrective actions for both the engine vibration isolator mounting brackets and the elastomer core asemblies. The United Kingdom of Great Britian Civil Aviation Authority (CAA-UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in Great Britain, has classified this Pilatus Britten-Norman Limited, Mandatory Service Bulletin BN-2/SB.172, Issue 2 dated June 2, 1986, and the actions recommended therein by the manufacturer, as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under the United Kingdom of Great Britain registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of Pilatus Britten-Norman Limited, Service Bulletin No. BN-2/SB.172, Issue 2 dated June 2, 1986, and the mandatory classification of this Service Bulletin by the CAA-UK. Based on the foregoing, the FAA believes that the condition addressed by Pilatus Britten-Norman Limited, Service Bulletin BN-2/SB.172, Issue 2 dated June 2, 1986, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require:

(a) Inspection of the vibration isolator mounting brackets, Barry Part No. 44-9115-0100, for cracks at the intersection of each main rib with the elastomer core rim, within 100 hours time-in-service (TIS); if cracked, replacement of the bracket prior to further flight, with an equivalent serviceable part; replacement prior to further flight of all three "thin-ribbed" brackets as an engine set, if any "thin-ribbed" bracket is found cracked; and a repetitive inspection every 500 hours TIS thereafter; and

(b) Inspection of the vibration isolator elastomer cores, Barry Part No. R20700-2, for cracks, tears, or delaminations, within 100 hours TIS; replacement prior to further flight of any part number (P/N) R20700-2 with stiffer P/N R20700-15 serviceable elastomer cores; replacement prior to further flight of any elastomers found cracked, torn, or delaminated; and a repetitive inspection of the elastomers every 100 hours TIS thereafter.

The FAA has determined that there are approximately 100 airplanes affected by the proposed AD. The cost of inspecting airplanes as required by the proposed AD is estimated to be eight manhours of labor per engine at $40 per manhour. The total cost is estimated to be $640 per airplane for a total cost of $64,000 to the private sector.

The cost of compliance with the proposed AD is so small that it will not have a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a singnificant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new AD:

Pilatus Britten-Norman Limited: Applies to Model BN-2T Islander airplanes, (all serial numbers) certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent the possibility of high engine vibrations and possible propeller whirl flutter, accomplish the following:

(a) Within 100 hours time-in-service (TIS), after the effective date of this AD and at each 500 hours TIS thereafter:

(1) Inspect the isolator mounting brackets, Barry Part No. 44-9115-0100, for cracks in accordance with the "Inspection (Part A)—Forged Brackets" paragraph of Pilatus Britten-Norman (PBN) Limited Service Bulletin (S/B) No. BN-2/SB.172, Issue 2 dated June 2, 1986, and:

(i) If a cracked "thick-ribbed" (0.190 inches) bracket is found, prior to further flight, repalce the bracket with a similar serviceable part, or

(ii) If a cracked "thin-ribbed" (0.150 inches) bracket is found, prior to further flight, replace all three brackets as an engine mounting set with "thick-ribbed" brackets in accordance with the "Rectification (Part B)—Forged Brackets" paragraph of PBN S/B No. BN–2/SB.172, Issue 2 dated June 2, 1986.

(b) Within 100 hours TIS after the effective date of this AD, and at each 100 hours TIS thereafter:

(2) Inspect the Barry-manufactured elastomer cores, and:

(i) If Part Number (P/N) R20700–2 is installed, prior to further flight, replace such cores with stiffer serviceable cores P/N R20700–15; or,

(ii) If P/N R20700–15 is installed, inspect for cracks, tears, or delamination in accordance with the "Inspection and Rectification of Elastomer Cores (Part C)" paragraph of PBN S/N No. BN–2/SB.172, Issue 2 dated June 2, 1986, and if defective, prior to further flight, replace with a serviceable core.

(c) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(d) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium.

All persons affected by this directive may obtain a copy of the document referred to herein upon request to Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, England, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 8, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86–18397 Filed 8–14–86; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 86–AWP–23]

Proposed Alteration of Control Area 1487; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Control Area 1487 located in the vicinity of Anchorage, AK, by realigning the centerline to the south. The realignment would coincide with the establishment of three proposed new oceanic routes. This action would enhance and improve traffic flow by permitting expanded use of domestic air traffic control (ATC) procedures thereby allowing additional flexibility for maneuvering traffic on their assigned routes for the ocean crossing.

DATE: Comments must be received on or before October 1, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 86–AWP–23, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86–AWP–23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) 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 of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign Control Area 1487 located in the vicinity of Anchorage, AK. The realignment would provide domestic controlled airspace for three new oceanic routes which converge at the KATCH, AK, Intersection. Studies conducted by the National Airspace Review Group recommended that control area boundaries be adjusted to maximize the use of radar control when such action would eliminate confusion concerning the implementation of ATC separation standards where Special Use Airspace abuts Controlled Area/Flight Information Region (CTA/FIR) boundaries. The realignment of Control Area 1487 would permit the expanded use of domestic ATC procedures and would aid controllers in establishing aircraft on their assigned routes prior to crossing the FIR boundary. Aircraft positions and routes would be verified prior to radar termination. Section 71.163 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

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

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

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) Internstional Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to. the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with tbe provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Aivation safety, Additional control areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (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 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.163 is amended as follows:

Control 1487—[Revised]

That airspace extending upward from 5,500 feet MSL to FL 450, within the area bounded by a line beginning at lat. 58°20'00"N., long. 148°55'00"W.; to lat. 59°08'30"N., long. 147°16'00"W.; counterclockwise via the arc of a 172-mile radius centered on the Anchorage VOR/DME to lat. 60°14'10"N., long. 145°29'30"W.; thence southeast 3 nautical miles from and parallel to the U.S. coastline to lat. 54°40'00"N., long. 132°56'00"W.; to lat. 54°14'00"N., long. 134°57'00"W.; to lat. 54°00'00"N., long. 136°00'00"W.; to lat. 52°43'00"N., long. 135°00'00"W.; to lat. 56°45'42"N., long. 151°45'00"W.; to the point of beginning. The portion within Canada is excluded.

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

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-18402 Filed 8-14-86; 8:45 am]

BILLING CODE 4910-03-M

---

14 CFR Part 71

[Airspace Docket No. 86-AWP-17]

Proposed Alteration of Control Area 1416; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Control Area 1416 located in the vicinity of Fortuna, CA, by realigning the centerline to the south. The realignment would coincide with the establishment of three proposed new oceanic routes. This action would enhance and improve traffic flow by permitting expanded use of domestic air traffic control (ATC) procedures thereby allowing additional flexibility for maneuvering traffic on their assigned routes for the ocean crossing.

DATE: Comments must be received on or before October 1, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWP-17, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWP-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing

each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) 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 of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign Control Area 1416 located in the vicinity of Fortuna, CA. The realignment would provide domestic controlled airspace for three new oceanic routes which converge at the new ROBBY intersection proposed to be established on Control 1416. Studies conducted by the National Airspace Review Group recommended that control area boundaries be adjusted to maximize the use of radar control when such actions would eliminate confusion concerning the implementation of ATC separation standards where Special Use Airspace abuts Controlled Area/Flight Information Region (CTA/FIR) boundaries. The realignment of Control Area 1416 would permit the expanded use of domestic ATC procedures and would aid controllers in establishing aircraft on their assigned routes prior to crossing the FIR boundary. Aircraft positions and routes would be verified prior to radar termination. Section 71.163 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

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

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in consonance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Operations Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and slso whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Aviation safety, Additional control areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (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 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.163 is amended as follows:

Control 1416—[Revised]

That airspace bounded by a line beginning at lat. 43°46'54" N., long. 126°37'47" W.; to lat. 41°23'24" N., long. 124°45'47" W.; to lat. 40°42'43" N., long. 124°09'16" W.; to lat. 40°37'44" N., long. 124°18'37" W.; to lat. 41°17'25" N., long. 124°56'57" W.; to lat. 42°35'56" N., long. 126°45'03" W.; to the point of beginning, excluding that airspace below 5,000 feet MSL which lies outside the Continental limits of the United States.

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

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–18404 Filed 8–14–86; 8:45 am]

BILLING CODE 4910–03–M

---

14 CFR Part 71

[Airspace Docket No. 86–AWA–7]

Proposed Alteration and Revocation of VOR Federal Airways; Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several Federal Airways located in the state of Michigan by revoking and renumbering some airway segments. This action supports the FAA agreement with the International Civil Aviation Organization (ICAO) to eliminate all alternate route designations from the National Airspace System (NAS).

DATE: Comments must be received on or before October 1, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 86–AWA–7, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is

located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWA-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) 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 of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to change the descriptions of several VOR Federal Airways located in the state of Michigan by deleting all alternate route designations from the NAS. Also, certain airway segments would be revoked and other segments would be renumbered. This action is in support of the FAA agreement with the ICAO to eliminate all alternate airway designations from the NAS. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

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

List of Subjects in 14 CFR Part 71

Aviation Safety, VOR Federal Airways.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (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 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V-7 [Amended]

By deleting the words "; including an east alternate via Escanaba, MI".

V-9 [Amended]

By deleting the words "Iron Mountain, MI, including an east alternate from Green Bay to Iron Mountain via Menominee, MI; Houghton, MI; including an E alternate via Marquette, MI." and substituting the words "Iron Mountain, MI; to Houghton, MI."

V-341 [Amended]

By deleting the words "to Oshkosh, WI." and substituting the words "Oshkosh, WI; Green Bay, WI; Menominee, MI; Iron Mountain, MI; Marquette, MI; to Houghton, MI."

V-450-[Amended]

By deleting the words "From Green Bay, WI;" and substituting the words "From Escanaba, MI, via Menominee, MI; Green Bay, WI;"

V-45-[Amended]

By deleting the words ", including a west alternate via INT Saginaw 353° and Alpena 232° radials"

V-78-[Amended]

By deleting the words "to Alpena, MI." and substituting the words "Alpena, MI; INT Alpena 232°T(239°M) and Saginaw, MI, 353°T(356°M) radials; to Saginaw."

V-193-[Amended]

By deleting the words ", including a W alternate via Manistee, MI"

V-285-[Amended]

By deleting the words "including an E alternate via INT Indianapolis 038° and Kokomo 182° radials;" and by deleting the words "to White Cloud, MI." and substituting the words "White Cloud, MI; Manistee, MI; to Traverse City, MI."

V-216-[Amended]

By deleting the words ", including a southern alternate via INT Saginaw 131° and Peck 270° radials"

V-233-[Amended]

By deleting the words "; including a west alternate from Mount Pleasant to Pellston via Traverse City, MI"

V-320-[Revised]

From Pellston, MI, via Traverse City, MI; Mount Pleasant, MI; Saginaw, MI; INT Saginaw 131°T(134°M) and Peck, MI, 270°T(277°M) radials; Peck; to Toronto, ON, Canada. The airspace within Canada is excluded.

Issued in Washington, DC, on August 7, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-18403 Filed 8-14-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9194]

Buckingham Productions, Inc. et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Furlong, Pa. marketers of mail-order weight reduction or weight control products, programs or services to cease falsely representing the effectiveness of its programs, products or services without competent and reliable evidence supporting such claims.

DATE: Comments must be received on or before October 14, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/B–407, Washington, DC 20580 (202) 376–8720.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Mail order diets, Trade practices.

In the Matter of: Buckingham Productions, Inc., a corporation, trading and doing business as Rotation Diet Center; Furlong-Elliot Corp., a corporation; Freedom Center, Inc., a corporation; Plaza Business Services, Inc., a corporation; N.F. Rotation, Inc., a corporation; Rotation-Freedom Diet, Inc., a corporation; Health and Diet Corp., Inc., a corporation; Howard Elliot, individually and as an officer of said corporations; Gail Elliott, individually; Judy Ruthrauff, individually and as an officer of said corporations; Dorothy Woolslager, individually and as an officer of said corporations, and Benito Ventresca, individually and as an officer of said corporations, Docket No. 9194; Agreement Containing Consent Order to Cease and Desist.

The agreement herein, by and between Buckingham Productions, Inc., trading and doing business as Rotation Diet Center; Furlong Elliot Corp.; Freedom Center, Inc.; Plaza Business Services, Inc.; N–F Rotation, Inc:, Rotation-Freedom Diet, Inc.; Health and Diet Corp., Inc., corporations; and Howard Elliot, Judy Ruthrauff, Dorothy Woolslager and Benito Ventresca, individually and as officers of said corporations, and Gail Elliot, individually ("respondents") and their attorney and counsel for the Federal Trade Commission, is entered in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Buckingham Productions, Inc., trading and doing business as Rotation Diet Center, is a Pennsylvania corporation with its principal office and place of business at 73 Valley Drive in Furlong, Pennsylvania 18925.

Respondent Furlong-Elliot Corp. is a Pennsylvania corporation with its principal office and place of business at 73 Valley Drive in Furlong, Pennsylvania 18925.

Respondent Freedom Center, Inc. is a Pennsylvania corporation with its office and place of business at 73 Valley Drive in Furlong, Pennsylvania 18925.

Respondent Plaza Business Services, Inc. is a Pennsylvania corporation with its principal office and place of business at 73 Valley Drive in Furlong, Pennsylvania 18925.

Respondent N.F. Rotation, Inc. is a Pennsylvania corporation with its principal office and place of business at 73 Valley Drive in Furlong, Pennsylvania 18925.

Respondent Rotation-Freedom Diet, Inc. is a Pennsylvania corporation with its principal office and place of business at 73 Valley Drive in Furlong, Pennsylvania 18925.

Health and Diet Corp., Inc., a Pennsylvania corporation, will be added to this agreement as a named corporate respondent. The complaint will also be amended to include Health and Diet Corp., Inc. as a named corporate respondent. Health and Diet Corp., Inc.'s principal office and place of business is 73 Valley Drive in Furlong, Pennsylvania 18925.

Respondent Howard Elliot is an officer of the corporate respondents. He formulates, directs and controls the acts and practices of the corporate respondents, and his address is the same as the corporate respondents.

Respondent Judy Ruthrauff is an officer of the corporate respondents. Her address is R.D. 1, Box 252A, Riegelsville, Pennsylvania 18077.

Respondent Dorothy Woolslager is an officer of the corporate respondents. Her address is R.D. 1, Box 24, Carversville-Wismer Road, Pipersville, Pennsylvania 18947.

Respondent Benito Ventresca is an officer of the corporate respondents. His address is 4716 Woodfield Circle, R.D. 4, Doylestown, Pennsylvania 18901.

Respondent Gail Elliot appeared to be co-owner of the corporate respondents. Her address is the same as the corporate respondents.

2. The complaint in this proceeding will be amended so as to dismiss the complaint against respondents Judy Ruthrauff, Dorothy Woolslager, Benito Ventresca and Gail Elliot.

3. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violations of sections 5 and 12 of the Federal Trade Commission Act.

4. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

5. Respondents waive:

(a) Further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of laws;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

6. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service.

Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' address as stated in this agreement shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

9. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondents Buckingham Productions, Inc., also trading and doing business as Rotation Diet Center, Furlong-Elliot Corp., Freedom Center, Inc., Plaza Business Services, Inc., N.F. Rotation, Inc., and Rotation-Freedom Diet, Inc., and Health and Diet Corp., Inc., corporations, their successors and assigns, and their officers, and Howard Elliot, individually and as an officer of the corporations; and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, distributorship or other device, in connection with the advertising, offering for sale, sale or distribution of any weight reduction or weight control product, program, or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(A) Representing, directly or by implication, that:

(1) Any consumer can eat any quantity of food and still lose weight or maintain that weight loss, without an accompanying and proximate, clear and prominent disclosure that the consumer's weight loss or ability to maintain that weight loss depends on a reduction in caloric intake in the short term and an overall reduction in caloric intake over the long term.

(2) Thousands of consumers, or any number of consumers, have lost or maintained a specified amount of weight loss, or range of weight loss, unless such is the case.

(3) Any such product, either alone or in conjunction with any weight reduction or weight control program or service, will stop hunger or otherwise function as an appetite suppressant, or will eliminate or prevent fatigue, unless such is the case.

(4) Any such product, either alone or in conjunction with any weight reduction or weight control program or service, will help keep food from turning to fat, unless such is the case.

(B) Representing, directly or by implication, that any person has endorsed any such product, program or service, unless that person has committed that endorsement in writing and has authorized, in writing, its use in promotional or advertising materials, and unless respondents have good reason to believe that at the time of their representation that person continues to subscribe to the views presented.

(C) Failing to disclose any material connection, where one exists, between an endorser (except for a celebrity endorser) of any such product, program or service and any respondent; provided, however, that a "material connection" shall mean, for purposes of this order, any relationship between an endorser of any such product, program or service, and any entity marketing such product, program or service which relationship would not reasonably be expected by consumers and, if known by consumers, might materially affect the weight or credibility given to the endorsement.

(D) Representing, directly or by implication, the usual or average weight loss, or range of weight loss, obtained or obtainable from any such weight reduction or weight control product, program or service, unless at the time of making such representation respondents possess and rely upon competent and reliable survey or other scientific evidence that substantiates the representation.

(E) Making any representation, directly or by implication, regarding the efficacy, safety, or performance of any weight reduction or weight control product, program or service, the content or mode of action of any weight reduction or weight control product, program or service, or the monetary savings that may or will result from the purchase or use of such product, program or service, unless at the time of making such representation respondents possess and rely upon competent and reliable survey or other scientific evidence that substantiates the representation.

For purposes of Part I of this order, "competent and reliable" evidence shall mean tests, analyses, research, studies, surveys, or other evidence, conducted and evaluated by qualified persons in an objective manner and using generally accepted procedures.

II

It is further ordered that the complaint in this proceeding is amended by (i) dismissing the complaint as to respondents Judy Ruthrauff, Dorothy Woolslager, Benito Ventresca and Gail Elliot; and (ii) adding Health and Diet Corp., Inc., a Pennsylvania corporation, as an additional respondent. The amended complaint will be issued with this order.

III

It is further ordered that for three years from the date that the representations to which they pertain are last disseminated, respondent corporations, their successors and assigns, and their officers, and the individually named respondent, and respondents' agents, representatives and employees shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon to substantiate any such representation.

2. All test reports, studies, surveys, or other materials in their possession or control that contradict, qualify, or call into question such representation.

IV

It is further ordered that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the

corporation(s) which may affect compliance obligations arising out of the order.

V

It is further ordered that respondents and their successors or assigns, shall forthwith distribute a copy of this order to each of their operating divisions, to all officers, agents or representatives who are engaged in the preparation and placement of advertisements or promotional materials, to all employees who communicate with customers or potential customers as part of their employment responsibilities, and to all distributors of products manufactured or marketed by respondents.

VI

It is further ordered that the individual respondent named herein shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and that, for a period of 10 years from the date of service of this order, the individual respondent named herein shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the advertising, endorsing, promotion, offering for sale, sale, or distribution of any weight reduction or weight control product, program, or service, and of his affiliation with a new business or employment in which his own duties and responsibilities involve the advertising, endorsing, promotion, offering for sale, sale, or distribution of any weight reduction or weight control product, product, program or service, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment.

VII

It is further ordered that respondents and their successors or assigns, shall, within sixty (60) days after service of this order, and also one (1) year thereafter, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Buckingham Productions, Inc., trading and doing business as the Rotation Diet Center, Furlong-Elliot Corp., Freedom Center, Inc., Plaza Business Services, Inc., N.F. Rotation, Inc., Rotation-Freedom Diet, Inc., Health and Diet Corp., Inc., corporations, and from Howard Elliot, individually and as an officer of the corporate respondents.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that respondents made false, misleading and unsubstantiated claims in advertising for their various weight control products and programs, including the "Rotation Diet," the "Freedom Diet," and the "Rotation-Freedom Diet." As to the allegedly false claims, the complaint charges that advertisements falsely claimed that dieters could eat unlimited quantities of food four days a week and still lose substantial amounts of weight. The complaint also charges that the ads falsely claimed that "Rotation Diet Wafers," "Rotation Chewable Tablets" and "Freedom Chewable Tablets" would stop hunger and eliminate or prevent fatigue and that the "Take-A-Break" tablets would help food turning to fat. The complaint also charges that advertisement falsely claimed that hundreds of dieters had lost 62 pounds. The complaint also alleges that testimonials of successful dieters were falsely represented to be actual and genuine when they were not. The complaint also charges that respondents failed to disclose that other dieters providing testimonials were employees of respondents.

The complaint also challenges several advertising claims as unsubstantiated, including the claim that the usual monthly weight loss for women is 8–20 pounds and 12–25 pounds for men. The complaint also challenges as unsubstantiated, advertising claims regarding the diets' safety, claims for the programs for maintenance of weight loss, and claims for the "Take-A-Break" and Make-A-Break" programs that allow dieters to stop dieting for up to 15 days and lose within a week of resuming dieting any weight gained during the break. Finally, the complaint charges that claims that the Rotation Diet saves as much as it costs are unsubstantiated.

The consent order contains various provisions designed to remedy the alleged advertising violations.

Part I of the order prohibits respondents from representing that consumers can eat as much as they want and still lose weight without also disclosing that weight loss or maintenance of weight loss depends on a reduction of caloric intake over the long and short term. Respondents are also prohibited from representing that a number of consumers have lost specified amounts of weight, unless that is true. Similarly, respondents are also prohibited from representing that a product, either alone or as part of a weight control program, will suppress appetite, eliminate or prevent fatigue, or keep food from turning to fat, unless that is true.

Part I also prohibits respondents from using endorsements in advertisements unless respondents have the endorsement in writing, written authorization for its use and a reasonable belief that the endorser still subscribes to the claims made in the endorsement. Part I also requires respondents to disclose any relationship between an endorser (except for celebrity endorsers) and respondents' products or services that consumers would not expect and which, if known, might affect the endorsement's credibility.

Finally, Part I requires that respondents have, at the time the claims are made, competent and reliable evidence to substantiate weight loss claims and representations regarding the safety, efficacy or performance of any weight control product or service.

Part II amends the original complaint issued by the Commission in this matter to dismiss four individual respondents, Judy Ruthrauff, Dorothy Woolslager, Benito Ventresca and Gail Elliot and to add one corporate respondent, Health and Diet Corp., Inc.

Part III of the order requires respondents to maintain for three (3) years after dissemination, all materials substantiating representations made in advertising. These records may be inspected by Commission staff upon request.

Part IV requires respondents to notify the Commission thirty (30) days before any change in the corporate respondents that might affect compliance with this order.

Part V requires respondents to distribute copies of this order to employees and agents involved in preparing and placing advertising, to employees in contact with customers or potential customers, and to respondents' distributors.

Part VI requires Howard Elliot to notify the Commission of the

discontinuance of his present employment and of his affiliation with a new business or employment. It also requires that for a period of ten (10) years, he notify the Commission of each affiliation with a new business or employment whose activities, or his own duties, include advertising, endorsing, promoting or selling any weight reduction or weight control product or program.

Part VII requires respondents to file a compliance report with the Commission sixty (60) days after the order is served, and also one (1) year thereafter.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Phyllis A. Johnson,

Acting Secretary.

[FR Doc. 86-18427 Filed 8-14-86; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA Docket No. 107-PA-11; FRL-3066-4]

Commonwealth of Pennsylvania; Section 107—Attainment Status Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplement to proposed rulemaking and notice of reopening of public comment period.

SUMMARY: On June 29, 1983, (48 FR 29887) EPA proposed to approve reclassification of Madison, Mahoning, Boggs, Washington and Pine Townships in Armstrong County, Pennsylvania from nonattainment to attainment of the primary National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2) pursuant to section 107(d) of the Clean Air Act, 42 U.S.C. 7407(d).

Today's action supplements the June 29, 1983, proposal by discussing the requirements of the stack height regulations published on July 8, 1985 (50 FR 27892), and the possible impact those regulations may have on the Armstrong County demonstration of attaintment. Today's action also reopens the public comment period for the June 29, 1983, proposal for an additional 30 days. Public comment is solicited on the approvability of the section 107 reclassification as influenced by the application of the revised stack height regulations to the West Penn Power Company's Armstrong Station. At issue in this notice is whether the revised stack height regulations should be applied to the Armstrong Station and if so applied, whether the proposed reclassification should be approved. The stack height regulations themselves are not at issue in this rulemaking.

DATE: Comments should be submitted no later than September 15, 1986.

ADDRESSES: Copies of the proposed reclassification, the accompanying support documentation, and other information received by the Agency in connection with this rulemaking are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Ms. Donna Abrams.

All comments on the proposed reclassification should be addressed to Mr. Joseph W. Kunz, Chief, PA/WV Section, Air Programs Branch, at the EPA, Region III, address stated above.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Abrams at the EPA, Region III, address stated above or call (215) 597-9134.

SUPPLEMENTARY INFORMATION:

I. Background

A. History of the Stack Height Regulations

The problem of air pollution can be approached in either of two ways: Through technology-based standards that mandate specific control requirements (either control equipment or control efficiencies) irrespective of ambient pollutant concentrations, or through an air quality based system in which control requirements are designed to achieve specified ambient air quality levels. The Clean Air Act incorporates both approaches, but the State Implementation Plan (SIP) program under section 110 of the Act, 42 U.S.C. 7410 uses the latter approach.

There are two general methods for preventing violations of the National Ambient Air Quality Standards (NAAQS) and the increments for Prevention of Significant Deterioration (PSD). Continuous emission controls reduce on a continuous basis the quantity, rate, or concentrations of pollutants released into the atmosphere from a source. In contrast, dispersion techniques rely on the dispersive effects of the atmosphere to carry pollutant emissions away from the source and, thereby, prevent high concentration of pollutants near the source. Section 123 of the Clean Air Act, 42 U.S.C. 7423, limits the extent to which a State may rely on dispersion techniques to meet the NAAQS or the PSD increments.

Tall stacks, manipulation of exhaust gas parameters, and varying the rate of emissions based on atmospheric conditions are the basic types of dispersion techniques. The merging of gases from two or more stacks into one may also, under certain circumstances, be considered a dispersion technique. Tall stacks enhance dispersion by releasing pollutants into the air at elevations high above ground level, thereby providing greater mixing of pollutants into the atmosphere and reducing the concentrations at ground level without reducing the total amount of pollutant released. Manipulation of exhaust gas parameters or merging of stacks increases the plume rise from the source to achieve similar results. Variable controls adjust a source's rate of emissions according to meteorologic conditions. When conditions favor rapid dispersion, the source emits pollutants at higher rates, and when conditions are adverse, emission rates are reduced. Use of dispersion techniques in lieu of continuous emissmion controls results in additional atmospheric pollutant loading and can increase the likelihood that pollution will travel long distances before reaching the ground.

Although overreliance on dispersion techniques may produce adverse effects, some use of the dispersive properties of the atmosphere has long been an important factor in air pollution control. For example, some stack height is needed to prevent excessive pollutant concentrations near a source. When wind meets an obstacle such as a hill or a building, a turbulent region of downwash, wakes, and eddies is created downwind of the obstacle as the wind passes over and around it. This turbulence can force a plume rapidly to the ground, resulting in excessive concentrations of pollutants near the source.

Section 123 of the Clean Air Act, 42 U.S.C. 7423, limits the degree to which dispersion techniques may be considered in setting emission limitations. Specifically, section 123 requires that the degree of emission limitation shall not be affected by that portion of a stack height that exceeds "good engineering practice" (GEP) or by "any other disperson technique." It defines GEP, with respect to stack heights, as:

> The height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source

itself, nearby structures or nearby terrrain obstacles. . . .

Clean Air Act Section 123(c), 42 U.S.C. 7423(c).

Section 123 further provides that GEP stack height shall not exceed two and one-half times the height of the source (2.5H) unless the owner or operator of the source demonstrates, after notice and opportunity for public hearing, that a higher stack is needed to avoid "excessive concentrations." The statute leaves to the Administrator the responsibility for defining key phrases, including "excessive concentrations", "nearby", and "dispersion technique" and of setting the requirements for an adequate demonstration justifying stack height credit in excess of the 2.5H formula. Finally, Section 123 provides that the Administrator shall regulate only stack height credit—that is, the portion of the stack height used in calculating an emission limitation—rather than actual stack height.

On January 12, 1979, (44 FR 2608), EPA proposed regulations implementing section 123. The proposed regulations established three alternative ways to determine a source's GEP stack height: A *de minimis* height of sixty-five meters, a formula depending on the size of the source or nearby buildings, and a height demonstrated by fluid modeling or field studies to be necessary to avoid excessive concentrations.

Under the proposed regulations, a source choosing the last alternative in order to obtain credit for stack height in excess of the formula height was required to demonstrate that a lower stack height would result in pollutant concentrations, caused by downwash due to nearby terrain features, that exceeded a NAAQS or a PSD increment and that were at least 40 percent in excess of the maximum concentrations that would occur in the absence of such features.

On October 7, 1981 (46 FR 49814), EPA published a revised set of proposed regulations, and on February 8, 1982 (47 FR 5864), EPA issued final stack height regulations. The regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, (719 F.2d 436 (D.C. Cir., 1983)). On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions, and upholding other portions.

The 1982 regulations differed from the 1979 proposed regulations in that, among other things, the definition of "excessive concentration" required only that the concentration caused by downwash be more than 40 percent greater than the concentration that would occur in the absence of downwash-causing terrain features. The definition did not relate to exceedance of any absolute level, such as a NAAQS or PSD increment. The 1982 regulations also differed from the 1979 regulations in that they contained a narrow definition of "dispersion technique" that explicitly excluded the merging of gases from two or more stacks into one stack.

The Court of Appeals held, among other things, that EPA erred in defining "excessive concentrations" due to downwash, for purposes of justifying a stack greater than formula height, as nothing more than a 40-percent increase in pollutant concentrations over what would occur in the absence of downwash. It remanded this issue to EPA to relate the definition to some health and welfare concern. The Court also noted that the legislative history of the 1977 Clean Air Act amendments cautioned that credit for stacks above formula height should be granted only in rare cases and concluded that Congress deliberately adopted strict requirements for sources locating in hilly terrain.

A revised regulation addressing the court remanded issues was proposed on November 9, 1984, at 49 FR 44878 and promulgated on July 8, 1985, 50 FR 27892.

EPA, in its 1985 regulations, is requiring sources seeking credit for stacks above formula height to show by field studies or fluid modeling that the extra height is needed to avoid a 40-percent increase in concentrations due to downwash that would also result in exceedance of National Ambient Air Quality Standards or applicable PSD increments.

To conduct a demonstration to show whether an absolute air quality concentration such as a NAAQS or a PSD increment will be exceeded, it is necessary to specify an emission rate for the source in question. The 1979 proposed regulations did not specify an emission limit, but, in promulgating the 1985 regulations, the Agency recognized that such a specification is necessary. For this reason, the 1985 GEP regulations generally require that the emission rate specified for a source seeking to conduct a demonstration to justify stack height credit above the formula be equivalent to the emission rate prescribed by the New Source Performance Standard (NSPS) applicable to the appropriate industrial source category. In imposing this requirement, EPA is presuming that the NSPS limit can be met by all sources seeking to justify stack heights above formula height. A source may rebut this presumption, and establish an alternative emission limitation by demonstrating to the reviewing authority that the NSPS emission limitation may not feasibly be met, given the characteristics of the source. For example, it may be possible for a power plant presently emitting SO_2 at a rate of 1.8 lb/mm Btu, to show that the burden of meeting the applicable NSPS rate of 1.2 lb/mm Btu would be prohibitive in that it would require scrapping existing scrubber equipment and installing higher-efficiency scrubbers. Similarly, a source may be able to show that, due to space constraints and plant configuration, it is not possible to install the necessary equipment to meet the NSPS emission rate.

The 1985 regulations also contain a broader definition of "dispersion technique" than did the 1982 regulations remanded by the *Sierra Club* court. The definition explicitly includes the merging of gases from two or more existing stacks into one unless, for mergers conducted before the promulgation of the regulations, such merging was part of a change in operations that included the installation of emissions control equipment or was carried out for "sound economic or engineering reasons."

B. Armstrong—Attainment Demonstration

On March 3, 1978, EPA classified a portion of Armstrong County, Pennsylvania (Madison, Mahoning, Boggs, Washington, and Pine Townships) as a nonattainment area for sulfur dioxide (SO_2). See 43 FR 8962 (1978). This classification was based primarily on an air diffusion modeling study performed for the Pennslyvania Department of Environmental Resources (DER) by a consultant, Geomet, Inc. The study predicted violations of the National Ambient Air Quality Standards (NAAQS) for SO_2, resulting primarily from the West Penn Power Company (WPPC) Armstrong Power Plant, a two unit, coal-fired facility (180 mw each unit) located on the Allegheny River near the town of Reesedale in Washington Township in Armstrong County.

The study assumed that SO_2 emissions from the Armstrong Power Plant were equal to the limitations contained in Title 25 of the Pennsylvania Code at § 123.22(a):

4.8 lbs $SO_2/10^6$BTU—daily average not to be exceeded at any time;

4.0 lbs $SO_2/10^6$BTU—daily average not to be exceeded more than two days in any running 30-day period;

3.7 lbs $SO_2/10^6$BTU—30-day running average not to be exceeded at any time.

The maximum ambient SO_2 concentrations resulting from these emissions were predicted by the Geomet Study to be (in $\mu g/m^3$): 161 (annual mean), 720 (24-hour maximum), 4095 (3-hour maximum).

The NAAQS are (in $\mu g/m^3$): 80 (annual mean), 365 (24-hour maximum), 1300 (3-hour maximum).

On July 24, 1979, EPA published a **Federal Register** Notice (44 FR 43306) describing the steps that DER and WPPC had agreed to in a Consent Order and Agreement to provide for attainment of the SO_2 NAAQS.

The Consent Order and Agreement contained three parts. Part I imposed a final emission limitation and interim emission limitations which were more stringent than the State's existing emission limitation. The final emission limitation was based on the Geomet Study and was to be effective December 31, 1982. Part II gave WPPC the option of performing an additional modeling study for the purpose of showing that the final emission limitation required by the Geomet Study was too stringent. The results of the additional modeling study were to be used either to reclassify the affected area as "attainment" with the existing emission limitation, or to impose a different emission limitation which might be more or less stringent than the one required by the Geomet Study. Part III set out the requirements for a plan to attain the NAAQS to be submitted in the event that the additional modeling study of Part II failed to satisfy DER and EPA that the area should be reclassified to attainment.

Pursuant to the option which was allowed WPPC in Part II of the Consent Order and Agreement, WPPC contracted with United Engineers and Constructors, Inc., to do an additional modeling study to evaluate the 1976 Geomet Study. The United Engineers study did not concur in every respect with the Geomet Study but still predicted violations of the primary SO_2 NAAQS. WPPC then conducted a physical modeling study and a dispersion modeling study to determine the effect that the terrain in the area had on ambient concentrations and to determine if a stack could be constructed to a height permitted by "good engineering practice" (GEP) to eliminate the predicted violations.

DER and WPPC renegotiated the Consent Order and Agreement discussed above and submitted it to EPA as a proposed SIP revision on December 17, 1980. The revised Agreement included a schedule for construction of a 307-meter smokestack to replace the two existing 70-meter stacks at the plant, and set out interim emission limits which were to provide reasonable further progress towards meeting the NAAQS pending the completion of the stack at the end of 1982. The final emission limits under the Consent Order were to be the applicable limits in the Pennsylvania Code (§ 123.22(a) cited above).

EPA proposed approval of this SIP revision in the **Federal Register** on January 28, 1981 (46 FR 9128). No adverse comments were received. Additionally, a public hearing was held by the State on February 25, 1981 and no adverse comments were received.

Subsequently, on August 18, 1981, EPA published final approval of the SIP revision (46 FR 43423). The details with regard to the GEP stack height determination and the dispersion modeling of the GEP stack emissions, which were an integral part of this SIP revision, will be discussed below.

A physical modeling study to determine a GEP stack height was conducted by WPPC in accordance with EPA's 1979 proposed stack height regulations. To conduct the study, a physical model of the Armstrong Plant and surrounding terrain at a rule reduction of 1:960 was constructed. Downwind terrain out to 12 km was included, as was upwind terrain within approximately one-half mile of Armstrong. The physical modeling employed one single-shell, multi-flue stack as a replacement for the two existing stacks (one per unit) with emission rates equal to the DER regulatory limits that were then applicable to the Armstrong region (listed earlier in this notice) and at load conditions of 50, 75, and 100 percent.

Stack heights of 190 meters, 250 meters, and 310 meters were modeled in the wind tunnel. Once preliminary data indicated that a stack height in the range of 310 meters would prevent exceedances of the NAAQS, additional stack heights of 292.7 and 316.1 meters were modeled.

The data from these runs indicated that the maximum ground level concentration from the 310 meter stack height, with upwind terrain present (0.422 ppm) was in compliance with the 3-hour NAAQS for SO_2(0.50 ppm). These data also showed that the maximum concentration with the upwind terrain was 86 percent greater than the concentration without the upwind terrain. Furthermore, the next shorter stack tested (292.7 meters) resulted in exceedances (0.525 ppm) of the 3-hour NAAQS, and concentrations with the upwind terrain remained more than 40 percent in excess of concentrations without the upwind terrain. Physical limitations associated with the model scale precluded further refinement of the GEP stack height within the above 17-meter range. Subsequent to the completion of these studies, it was determined that the stack gas temperature had been incorrectly specified. The net effect of this error was that the recommended stack height had been overstated by 3 meters. Thus, in accordance with EPA's 1979 proposed stack height regulations, it was concluded that a 307-meter stack height was GEP.

The fluid modeling study conducted for Armstrong was carried out in accordance with EPA technical guidance that was in draft form at the time and which has since undergone some modification. The modifications include additional requirements for tests to assure consistency between the wind tunnel and actual atmospheric conditions. Although the Armstrong fluid modeling study was judged acceptable at the time, these additional tests would be required for a study conducted today. A more detailed discussion of this issue is contained in the Technical Support Document (TSD).

As required by EPA policy, WPPC conducted a dispersion modeling study to determine whether, with the 307-meter stack in place, the Armstrong area would attain the NAAQS for SO_2. The study used techniques specified in EPA's modeling guidelines (EPA–450/12–78–027, April 1978). The atmospheric dispersion model, RAMUEC1, was used to predict SO_2 impacts from Armstrong and from a proposed lower Armstrong Power Station in conjunction with the Armstrong impact. RAMUEC1 computed the SO_2 concentrations which resulted from the simultaneous operation of the existing Armstrong plant and the projected lower Armstrong plant.

Meteorological data used for the study were collected by WPPC at two sites in the Armstrong region from December 1, 1978, to November 30, 1979. Supplemental data recorded at the Greater Pittsburgh Airport National Weather Service Station were also used.

Background SO_2 data were collected from ten monitoring stations in the Armstrong region. The ambient SO_2 data were collected concurrently with both the meteorological and emissions data. EPA considered these to be on-side data, and therefore, only one year of data was required.

The input data for the study were based on 50 percent, 75 percent, and 100 percent of full load conditions and

actual load conditions over the period December 1, 1978, through November 30, 1979, with an emission limit of 4.0 lbs $SO_2/10^6$ BTU for the annual average and 4.8 lbs $SO_2/10^6$ BTU for the 3-hour and 24-hour impact analysis.

Receptor sites were chosen to provide sufficient delineation of local high terrain and adequate spatial representation by distance and direction from the Armstrong Plant. More receptors were located in sectors to the east of the plant than the west because the terrain is considerably higher to the east.

The study demonstrated that with the Armstrong 307-meter stack, and under all the load conditions just described, the NAAQS for SO_2 would be attained in the Armstrong region. Worst case conditions were found when Armstrong was operating at full load. The analysis found that the annual average SO_2 concentration was 46 $\mu g/m^3$, approximately one-half of the primary annual standard for SO_2 (80 $\mu g/m^3$) when Armstrong was operating at full load with an emission limitation of 4.0 lbs $SO_2/10^6$ BTU. Because DER's SO_2 regulations allowed up to 4.8 lbs $SO_2/10^6$ BTU heat input as a daily average for two days in any running 30-day period, the SO_2 concentration resulting from armstrong emissions at an average of 4.8 lbs $SO_2/10^6$ BTU was predicted for the 3-hour and 24-hour periods. It was shown that at this emission level, the highest second-highest SO_2 concentrations were 299 $\mu g/m^3$ and 646 $\mu g/m^3$ for 24-hour and 3-hour averaging times, respectively. These concentrations are within the 24-hour (365 $\mu g/m^3$) and 3-hour (1300 $\mu g/m^3$) NAAQS.

The techniques that were used in the dispersion modeling study were consistent with EPA policy in effect at the time. The receptor array was judged to be adequate, including many receptors specifically located to represent high terrain features. Background concentrations were gathered from ten monitoring stations in the Armstrong region. A more detailed discussion of the dispersion modeling is contained in the TSD.

On December 10, 1982, DER notified EPA that the terms of the Consent Order had been fully satisfied. WPPC's 307-meter stick was completed, and the Armstrong Plant was operating in accordance with the final emission limits specified in the Agreement. At that time, DER requested that the Armstrong area be reclassified "attainment" for SO_2.

On June 29, 1983 (48 FR 29887), EPA proposed approval of DER's reclassification request. The Notice of Proposed Rulemaking specifically described the GEP determination which was the basis for the attainment demonstration. No adverse comments were received. However, on October 11, 1983 the D.C. Circuit issued its opinion remanding portions of the 1982 stack height regulations (*Sierra Club v. EPA*, 719 F.2d 436 (D.C. Cir., 1983)). The history of EPA's development of stack height rules is described in Section A above. As a result of uncertainties about the potential impact of that decision and any revised rules on the attainment demonstration at issue here, EPA delayed final action on the reclassification until it could fully assess whether and to what extent the final rules would affect the reclassification.

The fluid modeling demonstration for the Armstrong Plant does not conform with the Agency's 1985 stack height regulations in that an emission limit higher than the NSPS limit was used and no showing was made that compliance with the NSPS limit would be infeasible. Also, no showing was made that the merging of the two 70-meter stacks into one 370-meter stack was undertaken as part of a change in operations that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons.

West Penn Power, however, with the support of the Commonwealth of Pennsylvania, argues that it should retain credit for the full height of its Armstrong stack and its stack merger without showing that it qualifies for such credit under the 1985 regulations. West Penn argues that EPA's approval of the Pennsylvania SIP revision that incorporated approval of the stack constituted an "ad hoc rule" that established specific requirements for the Armstrong Plant, and which were not affected by the court decision or superseded by subsequent rules of general applicability.

On April 29, 1986, EPA denied several petitions that requested that EPA amend the 1985 regulations so as to "grandfather" a previously-approved GEP stack height determination for the Kammer Power Plant in West Virginia. The Kammer Plant, like the Armstrong Plant, was the subject of a fluid modeling demonstration that does not conform to the 1985 stack height regulations. The two cases differ, however, in three ways. First, Kammer received EPA approval of credit for an existing stack which was constructed prior to carrying out fluid modeling, while West Penn designed and constructed its Armstrong stack based on the results of fluid modeling, and only after receiving EPA approval. Second, while credit for the Armstrong stack was established in a SIP revision rulemaking before 1982, credit for the Kammer stack was "approved" only in a letter and was explicitly based on consistency with the 1982 regulations that were later invalidated by the Court of Appeals in *Sierra Club*. Finally, unlike the Armstrong Plant, the Kammer Plant never received an EPA-approved SIP emission limit based on credit for its stack.

West Penn's position regarding the applicability of the 1985 GEP rules to Armstrong, and the issues which relate to that position, are set forth below.

II. Issues for Public Comment

By means of this Notice, EPA expressly seeks comment on the following question: Are the October 11, 1983 Court decision and resulting July 8, 1985 stack height regulations (50 FR 27892) applicable to West Penn Power Company's Armstrong Station in a manner which requires that the State of Pennsylvania and EPA reassess the Armstrong stack GEP determination and stack merger and, thereby, reassess the attainment demonstration? In order to focus public comment on this question, EPA sets forth here two possible answers to this question, together with the principal arguments in support of each position. Commenters are urged to address the arguments relating to each of the two available options and to identify and amplify any additional considerations relating to these options, or to suggest additional options other than those discussed here.

Option A: Apply the July 8, 1985, stack height regulations to Armstrong's (WPPC's) GEP determination and subsequent attainment demonstration.

In support of this position, it can be noted that the 1985 rules contain numerous grandfathering provisions, but none of them apply to WPPC's stack or its fluid modeling demonstration. Given the explicit grandfathering provisions and the extensive consideration that was given to grandfathering issues, it may be argued that the rules were not intended to implicitly grandfather any sources that were not explicitly grandfathered. The preamble to the regulations explicitly states that the provisions concerning GEP stacks are retroactive to December 31, 1970, and the limitation on credit for merged stacks is applicable to mergers that occurred before promulgation of the regulations. Finally, the Agency stated in its response to comments on the 1985 regulations, that "a fluid modeling demonstration has no significance apart from showing whether the source qualified for credit under the stack

height guidelines then in effect. Accordingly, such demonstrations can be grandfathered only to the extent that the substantive rules on which they are based have been grandfathered."

In evaluating the fairness of this position, it can be noted that, if WPPC's stack height credit is reduced by application of the 1985 rules, it will not lose all benefit from its stack, and it will not be penalized retroactively. The reduced stack height credit will affect only future emission limits, not past emission limits. WPPC has received full credit for its stack from the time it was constructed in 1982, until the present. If, as WPPC has claimed, application of the 1985 rules could require installation of a $100 million scrubber, then the amount that WPPC has saved by deferring that expenditure for over four year may make up for its claimed $13 million investment in its stack.

The 1979 proposed rules required a NAAQS or PSD increment exceedance as part of the definition of "excessive concentration," and, therefore, the 1979 proposal did not have the fundamental flaw which the Court of Appeals emphasized in invalidating the 1982 regulations, namely a failure to associate the definition with health and welfare-based standards. However, the 1979 proposal did not specify an emission limit, and the Agency concluded in promulgating the 1985 rules that the exceedance requirement is meaningless unless an emission limit is specified.

The fluid modeling undertaken by West Penn to establish GEP stack height in accordance with the 1979 proposal did specify an emission limit, which was the existing limit under the Pennsylvania Code, but which is higher than the NSPS limit in the 1985 rule. In addition, the fluid modeling does not fully conform to technical guidance that is in effect today.

Application of the 1985 stack height regulations to the Armstrong Plant would be consistent with the agency's denial of the petitions concerning the Kammer Plant. Although approval of the Kammer Plant's GEP demonstration was nominally based on the agency's invalidated 1982 stack height regulations, the Kammer demonstration, like the Armstrong demonstration, showed that the modeled stack height was necessary to avoid exceedance of a NAAQS as well as to avoid a 40% increase in pollutant concentration caused by downwash. Thus, the Kammer demonstration was consistent with the 1979 proposed regulations on which the Armstrong demonstration was based. Also, although final approval of the Kammer demonstration was by letter, that approval was issued after notice in the **Federal Register** and a public hearing, so that the procedures employed were somewhat similar to those employed for approval of the Armstrong determination.

It can also be argued that a decision to accept the prior GEP finding for the Armstrong stack would run counter to the *Sierra Club* court's admonition that credit for stack height in excess of formula height should be granted only with "utmost caution" in "rare circumstances," and that the Agency "should err on the side of reducing stack height [credit]." *Option B:* Do not apply the July 8, 1985, stack height regulations to Armstrong's GEP determination and subsequent attainment demonstration but, instead, accept the prior approval of the GEP determination for Armstrong.

In support of this position, it should be noted that EPA's approval of the Pennsylvania SIP revision that recognized full credit for the Armstrong stack was a final agency rulemaking action. It was undertaken in accordance with the procedural requirements for rulemaking. The final rule was not challenged by any party, and the period for appeal has expired. In the rulemaking action, EPA approved the fluid modeling demonstration that showed that the Armstrong stack height was required by good engineering practice. The Agency also approved emission limits based on modeling that incorporated the single 307 meter stack as a replacement for the two existing 70 meter stacks. EPA did not find that the statutory proscription of reliance on dispersion techniques required denial of credit for the merger.

Although the preamble to the 1985 rules states that they apply retroactively, neither the preamble nor the rules themselves explictly refer to previously-approved fluid modeling demonstrations. One could argue that the rules were intended to be retroactive in the sense that they would apply to existing stacks, but that they were not intended to overrule previous site-specific rulemaking actions, especially when those actions were not based on the invalidated 1982 stack height regulations.

West Penn did not construct the stack until after both EPA and Pennsylvania approved the SIP revision that was based on full credit for the stack. West Penn can, therefore, reasonably claim that it constructed the stack in reliance on that approval.

The SIP revision approval was not based on the 1982 rules that were remanded by the DC Circuit in *Sierra Club.* The 1979 proposed rules, like the 1985 rules and unlike the 1982 rules, required a NAAQS or PSD increment exceedance as part of the definition of "excessive concentration." Thus, the definition was arguably consistent with the subsequent *Sierra Club* opinion that required that the definition be related to health and welfare effects.

Finally, it should be noted that a determination of the continued validity of EPA's prior approval of credit for the Armstrong stack would not set a precedent of widespread applicability. Prior to promulgation of the 1985 rules, EPA approved credit for stack height in excess of formula height for only one other source besides Armstrong and Kammer, and that source never actually built its stack.

III. Summation

Before taking final action on the proposal to reclassify the Armstrong area to attainment for SO_2, EPA must decide what impact the 1985 GEP regulations should have on the evaluation of the attainment status of the area. If EPA determines that the 1985 GEP regulations are applicable to West Penn Power Company's Armstrong Station, then the request to reclassify the area to attainment would be denied pending a determination of the correct GEP stack height, of whether the stack merger was undertaken for sound economic or engineering reasons, and of the appropriate emission limits for that source. On the other hand, if EPA determines that the GEP attack height determination for the Armstrong remains valid and if no other basis for denying the reclassification request is identified through the comment period, EPA would take final action to approve the relcassification in accordance. With the June 29, 1983 proposal on this matter.

EPA expressly invites all comments which will assist in the resolution of this question.

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

Under 5 U.S.C. 605(b), the Administrator certifies that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: August 5, 1986.

Greene A. Jones,

Acting Regional Administrator.

[FR Doc. 86-18565 Filed 8-14-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-144]

Review of Technical Parameters for FM Allocation

AGENCY: Federal Communications Commission.

ACTION: Order extending time.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in response to the *Notice of Proposed Rule Making* in MM Docket 86-144 (April 29, 1986, 51, FR 15927). This *Notice* reviewed the technical parameters for FM broadcast stations allocations. The extension was requested by the Association for Broadcast Engineering Standards, Inc.

DATES: Comments are on or before August 26, 1986 and reply comments are due on or before September 9, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael A. Lewis, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Order Further Extending Time for Filing Comments To Notice of Proposed Rule Making

Adopted: August 7, 1986.

Released: August 8, 1986.

In the Matter of: Review of Technical Parameters for FM Allocation Rules of Part 73, Subpart B, FM Broadcast Stations.

By the Chief, Mass Media Bureau:

1. On June 10, 1986, the comment and reply comment deadlines in this proceeding were extended to August 11, 1986 and August 26, 1986, respectively. That action was taken to provide the National Association of Broadcasters (NAB) the necessary time to conduct tests on FM receivers' susceptibilities to intermediate frequency interference.

2. The Commission now has before it another motion to extend the comment deadlines. The Association for Broadcast Engineering Standards, Inc. (ABES) requests the extension to provide it the opportunity to study the data being compiled by the NAB.

3. Because the ideal of compiling the most complete record would be furthered by granting ABES request, we will again extend the filing deadlines (15 days for comments replies 14 days thereafter). We note, however, that there are other issues in this proceeding, independent of the intermediate frequency issue, which justify expedited action. Therefore, we would be reluctant to extend these deadlines a third time.

4. Accordingly, It is Ordered that the time for filing comments to the above referenced *Notice* Is Extended to and including August 26, 1986 and September 9, 1986, for reply comments.

5. This action is taken purusant to the authority found in sections 4(i), 5(c)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 86-18412 Filed 8-14-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 86-335; FCC 86-344]

Amendment of the Commission's Rules Concerning the Interconnection of Private Land Mobile Paging Systems With the Public Switched Telephone Network in the Radio Spectrum Below 900 MHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to eliminate the restriction on direct access paging on frequencies in the bands below 900 MHz. The proposal is intended to promote more rapid and efficient communications.

DATES: Comments must be filed on or before October 2, 1986, and reply comments on or before October 17, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, P.R. Docket 86-335, adopted August 4, 1986 and released August 11, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. Under current rules, paging signals may not be transmitted from telephone positions in the public switched telephone network (PSTN) on frequencies below 900 MHz. Based on the record of allowing direct access paging in the 929-930 MHz band and on the numerous waivers granted to medical entities operating on frequencies below 800 MHz allowing interconnection of paging operations with the PSTN the Commission proposes to eliminate the restriction prohibiting direct access paging on frequencies in bands below 900 MHz. In additon, the Commission proposes to exempt entities operating a paging system on frequencies below 800 MHz and providing interconnection capability from the requirements of § 90.477(d)(3). According to the Commission this section is intended to minimize the impact of interconnecting two-way dispatch operations with the PSTN in congested areas. One-way paging systems interconnected with the PSTN do not pose the same problem.

2. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

5. Accordingly, Notice Is Hereby Given of rulemaking to amend Part 90 of the Commission's rule and regulations, in accordance with the proposal set forth below. The proposed amendment to the rules is issued pursuant to authority contained in section 4(i), 303(b), 303(f), 303(g), and 303(i) of the Communications Act, as amended.

6. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the

Commission's rules 47 CFR 1.415 and 1.419, interested parties may file comments on or before October 2, 1986, and reply comments on or before October 17, 1986. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 90

Radio, Private land mobile radio services.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 90—[AMENDED]

Part 90 of the Commission's Rules is proposed to be amended as follows:

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

Authority: Section 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303 unless otherwise noted.

2. Section 90.477 is amended by adding a new paragraph (f).

§ 90.477 Interconnected systems.

* * * * *

(f) Paging systems operating on frequencies in the bands below 800 MHz are not subject to the interconnection provisions of § 90.477(d)(3).

3. Section 90.490 is amended by revising paragraph (c).

§ 90.490 One-way paging operations in the private services.

* * * * *

(c) Paging signals may be transmitted directly from telephone positions in the public switched telephone network. When land stations are multiple licensed or otherwise shared by authorized users, arrangements for the telephone service must be made with a duly authorized carrier by users, licensees, or their authorized agents on a non-profit, cost-shared basis. When telephone service costs are shared, at least one licensee participating in the costs sharing arrangements must maintain cost sharing records and the costs must be distributed at least once a year. Licensees, users, or their authorized agents may also make joint use arrangements with a duly authorized carrier and arrange that each licensee or user pay the carrier directly for the licensee's or user's share of the joint use of the shared telephone service. A report of the cost distribution must be placed in the licensee's station records and made available to participants in the sharing and the Commission upon request. In all cases, arrangements with the duly authorized carrier must disclose the number of licensees and users and the nature of the use.

* * * * *

[FR Doc. 86-18413 Filed 8-14-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

United States Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Late Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: This document supplements proposed rulemakings published in the **Federal Register** on March 21 and June 6, 1986, (51 FR 9854 and 51 FR 20677) and sets forth proposed frameworks, (i.e., the outer limits for dates and times when shooting may occur, hunting areas, and the number of birds which may be taken and possessed) for late-season migratory bird hunting regulations for 1986–87. These seasons generally will commerce on or about October 1, 1986, and include most of those for waterfowl.

The Service annually prescribes migratory bird hunting regulations frameworks to the States. The effect of this proposed rule is to facilitate the selection of hunting seasons by the States and to further the establishment of the late-season migratory bird hunting regulations for 1986–87.

DATE: The comment period for these proposed late-season frameworks will end on August 25, 1986.

ADDRESS: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Comments received on these proposed late-season frameworks will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC. The Service's biological opinion resulting from its consultation under section 7 of the Endangered Species Act is available for publc inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (202–254–3207).

SUPPLEMENTARY INFORMATION: The Migratory Bird Tready Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 21, 1986, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (51 FR 9854) a proposal to amend 50 CFR Part 20, with comment periods ending June 19, July 14 and August 25, 1986, respectively, for the 1986–87 hunting season frameworks proposed for Alaska, Hawaii, Puerto Rico and the Virgin Islands; other early seasons; and the late seasons. That document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under §§ 20.101 through 20.107, 20.109 and 20.110 of Subpart K. On June 6, 1986, the Service published in the **Federal Register** (51 FR 20677) a second document consisting of a supplemental proposed rulemaking dealing with both the early- and late-season frameworks. On July 3, 1986, of Service published for public comment in the **Federal Register** (51 FR 24415) a third document consisting a proposed rulemaking dealing specifically with frameworks for early-season migratory bird hunting regulations. On July 25, 1986, the Service published in the **Federal Register** (51 FR 26712) a fourth document containing final frameworks for Alaska, Puerto Rico and the Virgin Islands. On August 13, 1986, the Service published a fifth document (51 FR 28946) containing final frameworks for other early migratory bird hunting seasons from which State wildlife conservation agency officials selected early-season hunting dates, hours, areas and limits for 1986–87. This document is the sixth in the series and deals specifically with proposed frameworks for the 1986 late-season migratory bird hunting regulations. Before September 1, 1986, the Service will publish in the **Federal Register** a seventh document consisting of a final rules amending Subpart K of 50 CFR 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged and white-tipped doves, band-tailed pigeons, rails, woodcock, snipe, and

common moorhens and purple gallinules; teal seasons in September; sea duck seasons in certain defined areas of the Atlantic Flyway; September duck seasons in four States; Canada geese in September in parts of Michigan; sandhill crane seasons in the Central and Pacific Flyways; a sandhill crane and Canada goose season in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and extended falconry seasons.

In 1985, because of the declining status of ducks and their breeding habitats, conservative harvest regulations were established to help a declining resource rebuild its populations. The goal of the regulations established was a reduction of at least 25 percent in the expected harvest of ducks while maintaining the interest of sportsmen, landowners and other conservationists in protecting and enhancing duck populations and habitats.

At the July 1986 annual Waterfowl Status Meeting, the Service presented data that indicated improvement in duck breeding populations and their breeding habitats, and forecasted an increased 1986 fall flight of ducks compared to that of 1985. However, despite the overall improvements in habitat conditions and numbers of ducks, the Service cautioned that this year's forecasted fall flight is the second lowest on record and that the habitat and duck population improvements by no means represent full recovery. Six of the 10 most important species of ducks surveyed remain below breeding population objectives outlined in the recently adopted North American Waterfowl Management Plan.

Based on federal surveys, the duck harvest strategies of 1985–86 reduced the total duck harvest 27 percent from that of 1984–85. Of particular importance, the proportion of the mallard population removed by hunting in 1985 was smaller than in recent years. The 1985–86 duck harvest strategies were difficult for many concerned, but appear to have assisted in halting population declines. The Service advocates a duck harvest strategy for 1986–87 that will maintain the reduced harvest rate on mallards and all ducks. The proposed regulations frameworks presented in this document reflect the use of framework dates, season length and bag limits as regulatory tools to continue the positive waterfowl resource gains made in 1985. The Service notes that 1986 is an interim management year before the 5-year Stabilized Regulations study is fully analyzed. At that time, the Service expects to have new information which may lead to modification of the current approach to duck-harvest management.

Review of Comments Received at Public Hearing

Fifteen statements were offered at the August 1, 1986, public hearing. Portions of some of these statements were related to matters outside the purpose of the hearing. Each statement is summarized below and relevant portions are addresed in the responses.

Mr. Peter Duncan, representing the Atlantic Flyway Council, requested the Service consider an opening date framework of October 1 to allow the hunting season on ducks to begin during mid-week which would reduce harvest pressure while providing an increased opportunity to harvest early migrants and resident species. Also, he urged the Service to give Atlantic Flyway States the option of a 40-day season with a 4-bird bag or a 45-day season with a 3-bird bag. He stated that the best data available suggests that these regulatory strategies would produce a similar effect on harvest. Additional recreational days were important in many States while a reduced bag limit would further restrict the harvest. He urged the Service to consider these options and recognize that the Atlantic Flyway harvest has little impact on waterfowl from mid-continent breeding areas.

Response. The Service recognizes the Atlantic Flyway's long standing tradition to use October 1 as the season framework opening date and the differing harvest characteristics of an earlier opening date are noted. However, during the 1985–86 waterfowl season, the opening dates were delayed (October 8 in much of the Atlantic Flyway) to reduce the overall waterfowl harvest. The harvest was reduced. In order to both continue with conservative harvest strategies and recognize the Council's desire for an earlier opening, the Service proposes an October 4 opening. The Atlantic Flyway's reommendation that optional season length and bag limits be available to each State was not accepted because the effects of the two different harvest strategies is uncertain and evidence of equivalency was not provided. Therefore, in lieu of an option, a 40-day season with 4-bird daily bag is proposed in the Atlantic Flyway. Recognizing that there are differences of opinion on how to reduce duck harvests, the Service appreciates the Atlantic Flyway Council's support of regulations for 1986–87 that are designed to maintain a conservative approach to harvest.

Mr. Steven Lewis, representing the Central Flyway Council, recommended (1) continuation of restrictive bag limit and increased informational efforts seeking voluntary restraints in lieu of a closed season on canvasbacks, and (2) conversion of Montana duck zones from "experimental" to "operational" status. Additionally, he supported all other proposed regulations.

Response. An Environmental Assessment *Proposed Hunting Regulations on Canvasback Ducks, 1983* sets forth a policy of managing canvasbacks by western and eastern populations and of considering all possible conservation actions including closed seasons should the eastern population drop below 360,000 birds (based upon a 3-year-average of the most recent breeding population indices). The average index was below this threshold in 1985 and in 1986; accordingly, the Service believes it prudent to suspend hunting until alternative conservation strategies can be fully developed.

The Service previously announced in the **Federal Register** (at 51 FR 9882 and 51 FR 20680) its belief that there should be no new duck hunting zones, or modification of existing zones, until the cumulative effects of such zones can be evaluated. This evaluation will be included in the development of a supplemental environmental impact statement on the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (see **Federal Register**, July 31, 1986, 51 FR 27430). Therefore, the Montana zone will continue to be considered as "experimental," and will be evaluated based on previously collected data.

The Service appreciates the Central Flyway Council's support of the proposed 1986–87 regulations.

Mr. Bill Graves, Mississippi Flyway Council Chairman, commented about the use of framework opening and closing dates in the regulation of duck harvest. He urged the Service to apply framework-date restrictions equitably among production and wintering areas. He further urged that an equitable framework be developed and applied to all four flyways.

He commented that this year we should fine-tune the regulations developed last year and maintain the equities in regulations reductions across flyways that was used last year.

Response. The Service will be reviewing framework dates along with other hunting regulations in the process of developing a supplemental environmental impact statement previously referred to in response to the

comments of Mr. Steven Lewis. The Service believes the regulations proposed herein maintain the equitable regulations reductions Mr. Graves calls for.

Mr. William Geer, representing the Pacific Flyway Council (Council), discussed the common goal of the Council and Service to continue with restrictive regulations until numbers of ducks have been restored. He noted that there still exists areas of disagreement between the Council and the Service, but they are narrowing and do not represent basic philosophical differences. He urges the Service to work with the Council to establish prescriptive regulations to allow agencies to plan ahead. He noted that the Council responded to the Service's request by recommending duck regulations designed to reduce harvests, and to further reduce the incidental harvest of cackling Canada geese and it further reduced white-fronted goose harvests by a dark-goose closure in a portion of the Sacramento Valley after November 30. California, Oregon, and Washington, with Council support, will seek emergency closures on white-fronted geese should the fall surveys produce a population index below the threshold level.

Response. The Service notes and appreciates the various conservative measures recommended by the Pacific Flyway Council for certain duck and goose populations. The Service will continue to work with the Council in the development of appropriate regulations in the years ahead.

Mr. Laurence R. Jahn, representing the Wildlife Management Institute, discussed several non-regulatory waterfowl management topics. He recommended that regulations be designed to further reduce harvest rates for mallards (especially western populations), pintails, black duck, canvasbacks, and all other ducks. He stated specific actions should be taken in both the United States and Canada to accelerate recovery of black duck populations. He commended Alaska for not having open seasons on Aleutian Canada geese, cackling geese, and emperor geese during 1986–87, and recommended similar action be taken in other areas in the Pacific Flyway. He requested that mangement agencies design and implement actions to prevent declines of waterfowl populations and to restore depressed populations. He sought preventative actions to avoid reducing populations of certain arctic-nesting geese, especially the Greater Snow Goose, because of forecasted poor production.

Response. The Service believes the proposed frameworks for duck hunting reflects Mr. Jahn's concern for continued and in some cases greater restrictions on harvests. The Service's views concerning the black duck are contained in the later response to Mr. John W. Grandy's comments. The Service again proposed that seasons on Aleutian and cackling Canada geese be closed in the Pacific Flyway and the season on emperor geese will be closed in Alaska where these geese habitually winter. The Service believes that for most arctic-nesting geese the frameworks of 1985–1986 were adequate and are being proposed again for this year. The Greater Snow Goose spring population is well above the objective level stated in the management plan. Further, production is forecast to be very poor in 1986, and therefore the flock will be much less vulnerable to hunting. These factors should assure the continued well-being of Greater Snow Geese without the need for more restrictive regulations. Frameworks for Atlantic brant, however, have been made more restrictive because experience has shown these birds to be vulnerable to hunting and winter mortality under certain weather and habitat conditions.

Mr. T. Miller, representing the Illinois Department of Conservation, commented about the Service's reluctance to grant two special Canada goose seasons in the northeast portion of Illinois, one in early October and the other in late December. He stated that the purpose of the seasons is to help control a growing flock of giant Canada geese in the northeastern part of the State. He said the proposed seasons are timed to avoid the peak migrations of Mississippi Valley Population (MVP) Canada geese which winter in southern Illinois and farther south, and presented information to indicate the proportion of migrant geese in the small expected harvest would be low. He requested that if an early-October season is unacceptable, the Service consider permitting a short season in late September. He stated that additional information from neck-collar observations is available, and requested that the Service delay a decision on the special seasons until Illinois can assemble and submit the data.

Response. If the State submits additional information during the comment period which indicates that few migrant Canada geese are in the proposed hunting areas in late September, the Service will consider a short season during that time. However, the Service feels that more information about the racial composition of geese in the proposed area in late December is needed before permitting a hunting season at that time of year. As mentioned previously (51 FR 20677, July 3, 1986), the Service is aware of increasing interest from a number of States in the use of hunting to control local flocks of giant Canada geese. The Service has requested that the Mississippi Flyway Council develop criteria and guidelines for the proposal, and conduct an evaluation of special giant Canada goose hunting programs. These should be completed and submitted to the Service for review prior to the development of additional State proposals for such programs.

Mr. Mike Berger, representing Ducks Unlimited, commented that the Organization's subjective forecast of duck flights was generally consistent with the Service's; however, Ducks Unlimited preferred to credit the modest improvements in duck indices more to improved habitats than the 1985 duck harvest strategies. Mr. Berger also made several comments regarding the recently adopted North American Waterfowl Management Plan.

Response. The Service welcomes the additional information available through Ducks Unlimited's annual waterfowl survey. It is recognized that the indices to 1986 breeding ducks may reflect improvements in habitats; however, it is believed the regulations restrictions and substantial reductions in harvests during 1985–86 seasons contributed to the upturn in breeding population indices. Mr. Berger's comments regarding the North American Waterfowl Management Plan are not part of this regulatory process for late-season regulations.

Mr. Steve Miller, representing the Wisconsin Department of Natural Resources, commented about the proposed Canada goose regulations and the framework opening date for duck hunting in Wisconsin. He stated that Wisconsin can agree with the proposed Canada goose regulations, although the short season outside the 6-county tag zone will be difficult to explain to hunters. He said the higher harvest objective will greatly assist in dealing with depredations and public-relations problems in the Horicon Marsh area. He cited results of a 1985 survey which indicated declining tolerance of Canada geese by landowners in east-central Wisconsin, and stated that this trend must be reversed. He also posed several questions about MVP Canada goose management in the future, especially as it pertains to Wisconsin. He indicated that the State prefers a fixed October 1 opening date for the duck hunting

season rather than October 4. The weekday opening that would occur in most years, together with more restrictive bag limits in Wisconsin during the first week of the season, helps to reduce hunting pressure during the early part of the season.

Response. The Service agrees that the problems caused by large concentrations of Canada geese can be difficult ones, and believes that the Service, the State, and the Mississippi Flyway Council must continue to work cooperatively to solve them within the guidelines of the MVP management program. The Service also believes that control of harvest in Wisconsin continues to be a key to cooperative management of MVP geese. The Service also believes that the combination of restricted framework opening dates and reduced season reduced lengths and bag limits proposed for the 1986 duck harvest season is necessary to maintain lower harvest rates on ducks during this period of low population levels. The Service will reexamine the framework dates issue before the 1987 late-season regulations cycle.

Mr. Douglas B. Inkley, representing the National Wildlife Federation (NWF), made requests of the Service regarding implementation of not-toxic shot regulations. He expressed the NWF's concern about general declines in waterfowl populations and said they would offer written comments on the proposed regulations. On behalf of both the NWF and the North Carolina Wildlife Federation he supported an operational season for tundra swan hunting in North Carolina and other Atlantic Flyway States. He suggests that the Service consider possible closure of canvasback hunting in the Atlantic, Mississippi, and Central Flyways but not in the Pacific Flyway. He supported continued restrictive regulations governing black duck harvest. He noted the NWF strongly supports cooperative efforts throughout the Pacific Flyway to restore cackling Canada geese, Pacific white-fronted geese, black brant and emperor geese and provided a copy of the Federation's 1985 resolution to that effect.

Response. Issues related to non-toxic shot regulations and implementation schedules are not a part of this regulatory process for late-season regulations. The Service will consider the NWF's written comments on the proposed regulations if they are provided during the comment period. The Service does not support an operational tundra swan hunting season in North Carolina nor an expansion of such a hunt until there has been an adequate evaluation of the experimental hunt. Further, any expansion of the hunt must follow development of a hunt plan that is mutually acceptable to the Service, the Canadian Wildlife Service, and all four flyway councils which share management of the Eastern Population of tundra swans. The proposed regulations reflect a season closure on canvasbacks in the Atlantic, Mississippi, and Central Flyways and an open season in the Pacific Flyway. The restrictive regulations for black ducks will be continued. Additional information concerning black ducks is contained in the Service's response to Mr. John W. Grandy. NWF's support for cooperative efforts to restore the four populations of Alaska-nesting geese is appreciated.

Mr. Gary Myers, representing The Wildlife Society, commended the Service for achieving a major reduction in the harvest of waterfowl during the 1985–86 season. He emphasized the need to continue restrictions during the 1986–87 season and cited support for Service action to close the season on canvasbacks. Further, he expressed support for actions taken to reduce the harvest on Atlantic brant, Pacific white-fronted geese, and cackling Canada geese and for hunting closures on Aleutian and cackling Canada geese and Emperor geese in Alaska. He noted The Society is pleased with actions recently taken to improve the MVP goose plan and asked the Service to work with the Mississippi Flyway Council (MFC) to achieve harvest objectives. In particular, The Society expressed concern for black ducks and indicated that a detailed review is being conducted and will be available this coming year. Mr. Myers also commented on nontoxic shot regulations and the North American Waterfowl Management Plan.

Response. The Service notes the comments presented and appreciates the Society's involvement in the management of the waterfowl resource. The Service proposes to continue restrictive waterfowl regulations in 1986–87 and will work with the MFC to achieve MVP harvest objectives. The Service welcomes the efforts by the Society to improve knowledge of black ducks and looks forward to the results of that effort. The comments of Mr. Myers regarding nontoxic shot and the North American Waterfowl Management Plan are not part of this regulatory process for late-season regulations.

Mr. John W. Grandy, representing The Humane Society of the United States and the World Society for the protection of Animals, urged the Service not to abandon regulatory restrictions and to either strengthen or adopt regulations similar to those of last year. With respect to black ducks, Mr. Grandy strongly suggested that the 25 percent reduction in the harvest was not adequate to achieve a significant change in harvest rates or an improvement in the population status. Further, he argued that since the harvest has been reduced in excess of 25 percent without a major change in the harvest rate, then, the reduction in the number of ducks killed must be the result of a decreasing population. He requested the Service to begin now with a major revamping of regulatory restrictions on black ducks.

Response. The Service continues to monitor the population status of black ducks as part of a harvest reduction strategy initiated in the Atlantic and Mississippi Flyways in 1983. Presently, winter inventories of black ducks show populations during 1986 to be 16 percent above 1985 estimates and near the 10-year average. Also, the harvest rates appear to have changed since 1983 on black ducks banded in the United States. The Service has requested those States in the Atlantic and Mississippi Flyways which have not achieved a 25 percent reduction to adopt more regulatory restrictions during the 1986–87 season. Under the North American Waterfowl Management Plan, Canada and the U.S. are developing a further cooperative program on black ducks. Consideration will be given to inventory methods, possible regular surveys, research needs, and whether additional common actions to manage harvest are necessary.

Mr. Albert M. Manville, representing the Defenders of Wildlife, commented that his organization (1) assumed that reductions in 1985 harvests contributed to the increases in 1986 duck breeding population indices and recommended continuation of restrictive regulations, (2) objected to "pre-dawn" (sic) shooting hours and requested another environmental assessment, (3) noted that the 1986 scaup breeding population index was unchanged from that of 1985 which was 25 percent below the previous year's index and recommended closure of special scaup seasons and elimination of extra-scaup options, (4) noted the status of American wigeon and recommended more restrictive bag limits, (5) continued to oppose the 3-year experimental swan season in North Carolina and recommended specifically that the number of permits authorized be reduced and made consistent with the Environmental Assessment, (6) encouraged consideration of weekday

rather than weekend opening framework dates, and (7) hoped that the Service will work more expeditiously to correct habitat degredation as the key cause of declining waterfowl populations. Mr. Manville also made several comments on matters that are not part of this regulatory process for late-season regulations, i.e., waterfowl research, waterfowl surveys, wetlands legislation, nontoxic shot regulations, and waterfowl disease and predator problems. Mr. Manville's comments relating to late season issues at the June 19, 1986, public hearing (**Federal Register** 51 FR 24419) are also noted.

Response. The proposed 1986–87 regulations continue essentially the same restrictions of 1985–86 regulations, and include additional restrictions such as no open season on eastern canvasbacks. The Service appreciates the Defenders support of such regulations. Shooting hours will be addressed in the process of developing a supplemental environmental impact statement referred in response to the comments of Mr. Steven Lewis.

Indices to scaup breeding populations, while down from 1984, are near long-term averages and show generally stable trends. Accordingly, the Service has proposed to continue the special season and option. Indices to American wigeon and blue-winged teal likewise indicate generally stable trends and will continue to receive protection under the restrictive frameworks proposed.

In regard to the number of swan permits issued during the North Carolina experimental hunt, the Environmental Assessment: Proposed Hunting Regulations on Eastern Population of Whistling (Tundra) Swans, 1984, provided for annual adjustments, based upon the actual success rate of permittees, in the number of permits issued.

The Service notes opening framework dates will be addressed in the process of developing the forthcoming supplemental environmental impact statement previously referenced.

Mr. John M. Anderson, representing the National Audubon Society, generally supported the proposed 1986–87 regulations and noted especially the status of Pacific Flyway white-fronted geese, dusky and cackling Canada geese, and canvasbacks, for which more restrictive regulations or closed seasons are proposed and complemented such management of a Flyway basis. He recognized the problems of excessive populations and supported the proposed white goose seasons in the Rio Grande Valley of New Mexico but cautioned that Gray's Lake whooping cranes use the area.

Response. The Service appreciates the Audubon Society's support of the proposed regulations and notes that Gray's Lake whooping cranes are continuously monitored, in the Rio Grande Valley and elsewhere, to assure reasonable protection from risks of any kind.

Mr. Richard Elden, representing the Michigan Department of Natural Resources, requested that the Service reconsider Michigan's request for a change in their duck hunting zone boundary and changes in Canada goose hunting regulations for the State.

Response. Although some minor modifications in duck zone boundaries are proposed for two States this year, the Service considers the Michigan request to be a major change and proposes to retain the 1985 zone structure. The overall issue of zoning as a harvest management strategy will be reviewed in the development of the supplemental environmental impact statement previously referred to in response to the comments of Mr Steven Lewis. The Service proposes to retain essentially the same Canada goose regulations as in 1985, even though the 1985 harvest was higher than the harvest ceiling established for 1986. This is proposed in recognition of the rapidly growing flocks of giant Canada geese in the State and the fact that at least a small proportion of the 1985 harvest consisted of giant Canada geese taken during the special late-season in the Southern Michigan Goose Management Area.

Mr Lew Pamplin, of the Alaska Department of Fish and Game and representing coastal states of the Pacific Flyway Council, provided an account of the cooperative Yukon-Kuskokwim Dalta Goose Management Plan as related to proposed regulations affecting harvests of the Pacific Flyway Population of white-fronted geese. That plan calls for a population objective of 300,000 geese, with a bottom threshold of 95,000 geese (3-year-average index) at or below which all hunting would stop. Hunting could be resumed once the average index exceeded 120,000 geese. The average population index is near the threshold at which hunting would stop. California, Oregon, and Washington are prepared to close the season on white-fronted geese through emergency action should this be necessary. A closure in those three states would be followed by closures in Alaska of both subsistence and sport hunting.

Mr. Pamplin also described restrictive measures taken in Alaska and Oregon to reduce harvests of dusky Canada geese and said that the present limited harvest was not a problem affecting population recovery but that predation of birds on their breeding grounds was a serious problem.

Response. The Service appreciates Mr. Pamplin's reaffirmation of the Council's support for emergency closures on white-fronted geese should this be necessitated and the information provided concerning other Pacific Flyway geese.

Written Comments Received

In the **Federal Register** dated June 6, 1986 (51 FR 20677), the Service reviewed comments on proposed season frameworks received from 10 correspondents as of May 1, 1986. Since then, 20 additional comments have been received. They are discussed here by regulatory topics arranged in the same order as in the March 21, 1986, **Federal Register** (51 FR 9854).

2. *Framework for ducks in the conterminous United States—outside dates, season length and bag limits.*

The Georgia Board of Natural Resources requested the Service give consideration to the Board's resolution that the framework closing date for waterfowl hunting in the State be extended to January 31.

Response. The Service is proposing that the framework closing date for duck hunting in Georgia be January 18, the same date as the rest of the Atlantic Flyway. In light of the current status of ducks, the Service believes general framework restrictions are needed in all flyways to maintain the reduced duck harvest of 1985. Because of this and the growing concern about the potential impacts of late hunting seasons on duck populations for reasons other than increased harvest, the Service does not support Georgia's framework extension request.

An individual form Michigan, two individuals from Minnesota and one individual from Texas submitted their concerns for the status of ducks in North America and urged the Service to use caution in establishing the 1986–87 duck hunting regulations frameworks.

Response. The Service believes the harvest management strategies of the proposed duck hunting regulations frameworks presented in this document reflect the concern for the duck resource shared by the four individuals.

The Atlantic Flyway Council has requested that the Service provide an extra hunting day for each day lost to those States in the Flyway that have a ban on Sunday hunting. The Service has received several congressional inquires regarding this same issue.

Response. The Service has addressed this issue on several occasions and continues to feel the loss of hunting days because of a State restriction against Sunday hunting is a matter for local resolution.

3. *American black ducks.* At the June 19, 1986, public hearing on early-season regulations, Mr. Donald S. Heintzelman, representing the Wildlife Information Center, Inc., expressed concern regarding the status of the black duck and recommended there be no sport hunting of the species.

Response. See the Service's response given earlier to the comments regarding black ducks presented at the public hearing by Mr. John Grandy.

12. *Canvasback and redhead ducks.* In the March 21, 1986, **Federal Register** (51 FR 9854), the Service reviewed the harvest management program for canvasbacks initiated in 1983. The Service noted that 1986 breeding population data and harvest information from the 1985–86 season would be available in July, and at that time the Service, in coordination with the flyway councils, would review the data and consider specific changes in the hunting frameworks for the canvasback.

At the July 25, 1986, Waterfowl Status Meeting, the Service requested that the Atlantic, Mississippi and Central Flyway Council's consider a closure on canvasback hunting. In response to the request, all three Councils recommended no change in the regulations frameworks from 1985 with the exception of a small modification by the Atlantic Flyway.

Response. An environmental assessment *Proposed Hunting Regulations on Canvasback Ducks, 1983* sets forth a policy of managing canvasbacks by western and eastern populations and established minimum levels for both populations below which season closure should be considered. The eastern population is below the minimum level this year for the second consecutive year, therefore the Service feels hunting should not continue until alternative conservation strategies can be fully developed.

13. *Duck Zones.* In the June 6, 1986, **Federal Register** (51 FR 20677) the Service presented the Mississippi Flyway Council Upper Region Regulations Committee's endorsement of duck zone boundary changes requested by Michigan, Indiana and Missouri, but noted the Service believes present duck hunting zones should not be modified and no new duck hunting zones should be initiated until some better informed judgments regarding their cumulative effect on the resource can be made.

At the July 31, 1986, Service Regulations Committee Meeting, the Upper Region Regulations Committee reiterated its endorsement. In addition, Missouri has requested the Service allow the change in the State's duck zones, and the support of several Missouri sportsmen for the change was transmitted to the Service by their Congressman.

Response. The Service is proposing the duck zone modifications in Indiana and Missouri because they only involve minor boundary adjustments, but feels the requested change in Michigan to be a major change and is proposing to retain its 1985 zone structure. The overall issue of zoning as a harvest management strategy will be reviewed in the development of the supplemental environmental impact statement referred to earlier in the Service's response to the comments of Mr. Steven Lewis.

14. *Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits.*

The Mississippi Flyway Council Lower Region Regulations Committee's recommendation that the framework closing date for snow and white-fronted goose hunting seasons in Arkansas be extended from January 20 to January 31 was noted by the Service in the June 6, 1986, **Federal Register** (51 FR 20677). In response to the Service's request for additional comments on the recommendation a sportsman from Arkansas has urged the Service to accept the recommendation. The Central Flyway Council has recommended that the framework closing date for the white-fronted goose hunting season in Arkansas not be extended because of the Council's concern regarding the status of the mid-continent white-fronted goose population.

Response. The Service shares the Central Flyway Council's concern regarding the status of mid-continent whitefronts, and therefore proposes to extend the framework closing date for hunting snow geese in Arkansas to January 31 but proposes the framework closing date for hunting white-fronted geese continue to be January 20. The Service further requests that the Central and Mississippi Flyway Councils jointly consider the population status, objectives, and harvest patterns of these birds and attempt to provide unified recommendations before the next season.

Michigan has requested some changes for late seasons including changes in goose seasons, limits and quotas.

Response. The Service proposes to retain essentially the same Canada goose regulations as in 1985, even though the 1985 harvest was higher than the harvest ceiling established for 1986. This is proposed in recognition of the rapidly-growing flocks of giant Canada geese in the State and the fact that at least a small proportion of the 1985 harvest consisted of giant Canada geese taken during the special late season in the Southern Michigan Goose Management Area.

In the June 6, 1986, **Federal Register** (51 FR 20677), the Service noted Massachusetts' request for changes in the State's Canada goose hunting frameworks, but deferred action pending review of the request by the Atlantic Flyway Council. The Council has reviewed the request and recommended that the Service make the requested changes.

Response. Although the Service is proposing a change in the Canada goose hunting frameworks for Connecticut, as recommended by the Atlantic Flyway Council to help control nuisance Canada geese, it feels the supporting justifications for the changes requested by Massachusetts are not adequate to alleviate concerns regarding the potential impact of such changes on migrant geese. The Service will review the recently developed Atlantic Flyway Council criteria for a special season such as this. As a basic guideline, population numbers and racial composition of Canada geese are needed for the specific area and time span during which the proposed season would occur. Such data should be collected prior to another proposal for the Massachusetts season.

Delaware's request for an experimental 10-day snow goose hunt in certain areas of the State was acknowledged in the June 6, 1986, **Federal Register** (51 FR 20677), but the Service indicated it did not favor such a season and that the State's request should be reviewed by the Atlantic Flyway Council. At the June 19, 1986, public hearing on early-season regulations, Mr. Donald S. Heintzelman, representing the Wildlife Information Center, Inc., stated that Delaware's request is unwarranted and should be rejected. The Atlantic Flyway Council announced its endorsement of Delaware's request at the July 31, 1986, Service Regulations Committee Meeting.

Response. The Service is not proposing the experimental season in Delaware because it continues to feel the current regulations frameworks for hunting snow geese in Delaware provide the State ample opportunity to test its dispersal proposal without the necessity

for additional hunting days or without resorting to an experimental season.

15. *Tundra swan.* At the June 19, 1986, public hearing on early-season regulations, Mr. Donald S. Heintzelman, representing the Wildlife Information Center, Inc., recommended that no sport hunting of tundra swans be permitted in North America.

Response. The sport harvest of swans is closely monitored by a permit system in all States where the species is hunted. In addition, fall and winter population surveys and limited breeding ground information provide annual information on the status of tundra swans. The Service has no reason to believe that the current level of harvest has any adverse impact on the resource. The Service proposes to continue the experimental tundra swan season in North Carolina and operational permit seasons elsewhere.

Public Comments

Based on the results of recently-completed migratory game bird studies and having due consideration for any data or views submitted by interested parties, the amendments resulting from these supplemental proposals will specify open seasons, shooting hours, areas, and bag and possession limits for waterfowl and coots.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process.

The Director intends that finally-adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time which the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before late July of specific, reliable data on this year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 22, 1986, is contrary to the public interest.

Comment Procedure

Interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536 in the Matomic Building, 1717 H Street, NW., Washington, DC.

All relevant comments on the late season proposals received no later than August 25, 1986, will be considered. The Service will attempt to acknowledge received comments, but substantive responses to individual comments may not be provided.

Nontoxic Shot Regulations

In the January 6, 1986, **Federal Register** (51 FR 409), the Service published a proposed rule describing areas in which lead shot would be prohibited for waterfowl and coot hunting in the 1986–87 hunting season. Appendix O of the recently published Final Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States contains a preliminary final rule addressing the 1986–87 nontoxic shot zones. The final rule describing areas where nontoxic shot is required will be published in the **Fedeal Register** when the Record of Decision on the Final Supplemental Environmental Impact has been signed. It is anticipated this will occur in mid-August.

Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting. Attention is also directed to the January 6 and June 27, 1986, **Federal Register** (51 FR 409 and 23444) which gave notice if States do not approve nontoxic shot zones when current Service guidelines and criteria indicate such zones are necessary to protect migratory birds, the Secretary of the Interior, acting through the Service, will not open those areas to waterfowl and coot hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 24241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and] ". . . by taking such action necessary to insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical."

Consequently, the Service initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 23, 1986, the Chief, Office of Endangered Species, gave a biological opinion that the proposed action was not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the **Federal Register** dated March 21, 1986 (at 51 FR 9859), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. These proposed regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in

the **Federal Register** dated July 25, 1986 (at 51 FR 26714).

Authorship

The primary author of this proposed rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1986–87 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1981 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended.

Proposed Regulations Frameworks for 1986–87 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks for season lengths, shooting hours, bag and possession limits and outside dates within which States may select seasons for hunting waterfowl and coots. Frameworks are summarized below.

General

Split Season: States in all Flyways may split their season for ducks, geese or brant into two segments. States in the Atlantic and Central Flyways may, in lieu of zoning, split their season for ducks or geese into three segments. Exceptions are noted in appropriate sections.

Shooting Hours: From one-half hour before sunrise to sunset daily, for all species and seasons, including falconry seasons.

Extra Teal: States in the Mississippi and Central Flyways selecting neither a teal or early duck season in September nor the point system may select an extra daily bag and possession limit of 2 and 4 blue-winged teal, respectively, for 9 consecutive days designated during the regular duck season. States in the Atlantic Flyway (except Florida) not selecting the point system may select an extra teal limit of no more than 2 blue-winged teal or 2 green-winged teal or 1 of each daily and no more than 4 singly or in the aggregate in possession for 9 consecutive days during the regular duck season. These extra limits are in addition to the regular duck bag and possession limits.

Special Scaup-only Season: States in the Atlantic, Mississippi and Central Flyways may select a special scaup-only hunting season not to exceed 16 consecutive days, with daily bag and possession limits of 5 and 10 scaup, respectively, subject to the following conditions:

1. The season must fall between October 4, 1986, and January 31, 1987, all dates are inclusive.
2. The season must fall outside the open season for any other ducks except sea ducks.
3. The season must be limited to areas mutually agreed upon by the State and the Service prior to August 31, 1986.
4. These areas must be described and delineated in State hunting regulations.

Or

Extra Scaup: As an alternative, States in the Atlantic, Mississippi and Central Flyways, except those selecting the point system, may select an extra daily bag and possession limit of 2 and 4 scaup, respectively, during the regular duck hunting season, subject to conditions 3 and 4 listed above. These extra limits are in addition to the regular duck limits and apply during the entire regular duck season.

Point System: Selection of the point system for any State entirely within a flyway must be on a statewide basis, *except* if New York selects the point system, conventional regulations may be retained for the Long Island Area. New York may not select the point system within the Upstate zoning option, and Massachusetts, Pennsylvania and Vermont may not select the point system pending completion of zoning studies.

Deferred Season Selections: States that did not select rail, woodcock, snipe, sandhill cranes, common moorhens and purple gallinules and sea duck seasons in July should do so at the time they make their waterfowl selections.

Frameworks for open seasons and season lengths, bag and possession limit options, and other special provisions are listed below by Flyway.

Exceptions: Since 1978, the Service has not been able to implement or enforce nontoxic shot zones in a State without approval of the appropriate State authorities. This restriction on use of funds by the Service has been contained in the Interior Department's Appropriations Act each year since 1978 (Pub. L. 98–473, Sec. 305). As a consequence of this restriction the Service can only propose additions and deletions to the designated nontoxic shot zones for waterfowl and coot hunting with the approval of State authorities. If States do not approve nontoxic shot zones when current Service guidelines and criteria indicate such zones are necessary to protect migratory birds, the Secretary of the Interior, acting through the Service, will not open those areas to waterfowl and coot hunting (January 6, 1986, **Federal Register**, 51 FR 409; June 27, 1986, **Federal Register**, 51 FR 23444). This action is pursuant to the Secretary's/Service's responsibilities under the Migratory Bird Treaty Act and, in the case of zones proposed for bald eagle protection, the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884).

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

Ducks, Coots and Mergansers

Hunting Seasons and Duck Limits:

Outside Dates: Between October 4, 1986, and January 18, 1987.

Hunting Season: Not more than 40 days.

Duck Limits: The daily bag limit of ducks is 4 and may include no more than 3 mallards (only 1 may be a hen), 2 pintails, 2 wood ducks, 1 black duck and 1 fulvous tree duck. The possession limit is 8, including no more than 6 mallards, (no more than 2 of which may be a female), 2 black ducks, 4 pintails, 4 wood ducks, and 2 fulvous tree ducks (except as noted below). The limit of redheads is 2 daily and 4 in possession. The season is closed to the taking of canvasbacks.

Point System Options: As an alternative to conventional bag limits for ducks, a 40-day season with a point-system bag limit may be selected by Atlantic Flyway States during the framework dates prescribed. Point values for species and sexes taken are as follow: in Florida only, the fulvous tree duck counts 100 points each; the female mallard, black duck, and mottled duck (except South Carolina) could 100 points each. Wood duck (except in Virginia, North Carolina, South Carolina and Georgia during the early wood duck season option), redhead and hooded merganser count 70 points each; scaup, blue-winged teal, green-winged teal, sea ducks, wigeon, shoveler, gadwall, and mergansers (except hooded) count 20 points each; the wood duck during the early wood duck season option in Virginia, North Carolina, South Carolina and Georgia counts 25 points each; the male mallard, pintail, ring-necked duck, goldeneye, bufflehead and all other ducks count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other

birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds which legally could have been taken in two days.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Merganser Limits: Throughout the Flyway the daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: Throughout the Flyway daily bag and possession limits of coots are 15 and 30, respectively.

Early Wood Duck Season Option: Virginia, North Carolina, South Carolina and Georgia may split their regular hunting season so that a hunting season not to exceed 9 consecutive days occurs between October 4 and October 15. During this period under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks. Under the point system, wood ducks shall be 25 points. For other ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point system regulations. For those States using conventional regulations, the extra teal option may be selected concurrent with the early wood duck season option. This exception to the daily bag and possession limits of wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

Restrictions on Wood Ducks: Under conventional and point system options, the daily bag and possession limits may not include more than 2 and 4 wood ducks, respectively.

Restriction on Mottled Ducks: The season is closed to the taking of mottled ducks in South Carolina.

Special Scaup and Goldeneye Season: In lieu of a special scaup season, Vermont may, for the Lake Champlain Zone, select a special scaup and goldeneye season not to exceed 16 consecutive days, with a daily bag limit of 3 scaup or 3 goldeneye or 3 in the aggregate, and a possession limit of 6 scaup or 6 goldeneyes or 6 in the aggregate, subject to the same provisions that apply to the special scaup season elsewhere.

Zoning

New York: New York may, for *Long Island Zone*, select season dates and daily bag and possession limits which differ from those in the remainder of the State.

Upstate New York (excluding the Lake Champlain zone) may be divided into three zones (West, North, South) for the purpose of setting separate duck, coot and mergenser seasons. Only conventional regulations may be selected. A 2-segment split season may be selected in each zone. Teal and scaup bonus options shall be applicable, but the 16-day special scaup season will not be allowed.

The *West Zone* is that portion of Upstate New York lying west of a line commencing at the north shore of the Salmon River and its junction with Lake Ontario and extending easterly along the north shore of the Salmon River to its intersection with Interstate Highway 81, then southerly along Interstate Highway 81 to the Pennsylvania border.

The *North* and *South Zones* are bordered on the west by the boundary described above and are separated from each other as follows: starting at the intersection of Interstate Highway 81 and State Route 49 and extending easterly along State Route 49 to its junction with State Route 365 at Rome, then easterly along State Route 365 to its junction with State Route 28 at Trenton, then easterly along State Route 28 to its junction with State Route 29 at Middleville, then easterly along State Route 29 to its intersection with Interstate Highway 87 at Saratoga Springs, then northerly along Interstate Highway 87 to its junction with State Route 9, then northerly along State Route 9 to its junction with State Route 149, then easterly along State Route 149 to its junction with State Route 4 at Fort Ann, then northerly along State Route 4 to its intersection with the New York/Vermont boundary.

Connecticut may be divided into two zones as follows:

a. North Zone—That portion of the State north of Interstate 95.

b. South Zone—That portion of the State south of Interstate 95.

Maine may be divided into two zones as follows:

a. North Zone—Game Management Zones 1 through 5.

b. South Zone—Game Management Zones 6 through 8.

New Hampshire

Coastal Zone—That portion of the State east of a boundary formed by State Highway 4 beginning at the Maine-New Hampshire line in Rollinsford west to the city of Dover, south to the intersection of State Highway 108, south along State Highway 108 through Madbury, Durham and Newmarket to the junction of State Highway 85 in Newfields, south to State Highway 101 in Exeter, east to State Highway 51 (Exeter-Hampton Expessway), east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south along Interstate 95 to the Massachusetts line.

Inland Zone.—That portion of the State north and west of the above boundary.

West Virginia may be divided into two zones as follows:

a. *Allegheny Mountain Upland Zone*—The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Route 50; follows U.S. Route 50 to the intersection with State Route 93; follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to Petersburg; follows State Route 28 south to Minnehaha Springs; then follows State Route 39 west to U.S. Route 219; and follows U.S. Route 219 south to the intersection of Interstate 64. The southern boundary follows I–64 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19. The western boundary follows: Route 19 north to the intersection of I–79, and follows I–79 north to the intersection of U.S. Route 48. The northern boundary follows U.S. Route 48 east to the Maryland State line to the point of beginning.

b. Remainder of the State—That portion outside the above boundaries.

Zoning Experiments

Vermont will continue a Lake Champlain Zone in 1986. The Lake Champlain Zone of New York must follow the waterfowl season, daily bag and possession limits, and shooting hours selected by Vermont. *Massachusetts, New Jersey,* and *Pennsylvania,* may continue zoning experiments now in progress as shown in the sections that follow. *Massachusetts* and *New Jersey* may be divided into three zones, *Pennsylvania* into four zones and *Vermont* into two zones all on an experimental basis for the purpose of setting separate duck, coot and merganser seasons. Only conventional regulations may be selected in Massachusetts, Pennsylvania and Vermont. A two-segment split season without penalty may be selected. The basic daily bag limit of ducks in each zone and the restrictions applicable to the regular season for the Flyway also apply. Teal and scaup bonus bird options, and the 16-day special scaup season shall be allowed.

Zone Definitions

Massachusetts

Western Zone—That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

Central Zone—That portion of the State east of the Western Zone and west of a line extending from the New Hampshire line at Interstate 95 south to Route 1, south on Route 1 to I–93, south on I–93 to Route 3, south on Route 3 to Route 6, west on Route 6 to Route 28, west on Route 28 to I–195, west to the Rhode Island line. *EXCEPT* the waters, and the lands 150 yards along the high-water mark, of the Assonit River to the Route 24 bridge, and the Taunton River to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of the State east and south of the Central Zone.

New Jersey

Coastal Zone—That portion of New Jersey seaward of a continuous line beginning at the New York State boundary line in Raritan Bay; then west along the New York boundary line to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware boundary in Delaware Bay.

North Zone—That portion of New Jersey west of the Coastal Zone and north of a boundary formed by Route 70 beginning at the Garden State Parkway west to the New Jersey Turnpike, north on the turnpike to Route 206, north on Route 206 to Route 1, Trenton, west on Route 1 to the Pennsylvania State boundary in the Delaware River.

South Zone—That portion of New Jersey not within the North Zone or the Coastal Zone.

Pennsylvania

Lake Erie Zone—The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from new York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

North Zone—That portion of the State north of I–80 from the New Jersey State line west to the junction of State Route 147; then north on State Route 147 to the junction of Route 220, then west and/or south on Route 220 to the junction of I–80, then west on I–80 to its junctions with the Allegheny River, and then north along but not including the Allegheny River to the New York border.

Northwest Zone—That portion of the State bounded on the north by the Lake Erie Zone and the New York line, on the east by and including the Allegheny River, on the south by Interstate Highway I–80, and on the west by the Ohio line.

South Zone—The remaining portion of the State.

Vermont

Lake Champlain Zone—Includes the United States portion of Lake Champlain and those portions of New York and Vermont which includes that part of New York lying east and north of boundary running south from the Canadian border along New York Route 9B to New York Route 9 south of Champlain, New York; New York Route 9 to New York Route 22 south of Keeseville; along New York Route 22 to South Bay, along and around the shoreline of South Bay to New York Route 22; along New York Route 22 to U.S. Highway 4 at Whitehall; and along U.S. Highway 4 to the Vermont border. From the New York border at U.S. Highway 4, along U.S. Highway 4 to Bermont Route 22A at Fair Haven; Route 22A to U.S. Highway 7 at Vergennes; U.S. Highway 7 to the Canadian border.

Interior Vermont Zone—The remaining portion of the State.

Sea Ducks: The daily bag and possession limit for sea ducks in special sea duck areas is in addition to the limits applying to other ducks during the regular duck season. In all areas outside of special sea duck areas, sea ducks are included in the regular duck season conventional or point system daily bag and possession limits.

Canada Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1986, and January 20, 1987, Maine, New Hampshire, Vermont, Massachusetts, Pennsylvania, West Virginia, Maryland and Virginia (excluding those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17) may select 70-day seasons for Canada geese; the daily bag and possession limits are 3 and 6 geese, respectively. In New York (including Long Island), Rhode Island, Connecticut (North Zone only), New Jersey, Delaware, the Delmarva Peninsula portions of Maryland and Virginia, and that portion of Pennsylvania lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I–81 to route 443, east on 443 to Leighton, then east via 208 to Stroudsburg, then east on I–80 to the New Jersey line, the Canada goose season length may be 90 days with the closing framework date extended to January 31, 1987. In addition, that portion of the Susquehanna River from Harrisburg north to the confluence of the west and north banches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river, is included in the 90-day zone. The daily bag limit within this area (except New York, Rhode Island, and Connecticut) will be 4 birds with the possession limit of 8 birds. The daily bag and possession limits in New York, Rhode Island, and Connecticut (North Zone) will be 3 and 6, respectively. In the South Zone of Connecticut (that portion south of Interstate 95) the Canada goose season length may be 90 days with the closing framework date extended to February 5, 1987. The daily bag limit and possession limit will be 3 and 6, respectively, before January 15 and 5 and 10, respectively from January 15 to February 5, 1987. This season in the South Zone of Connecticut is experimental. Those portions of the cities of Virginia Beach and Chesapeake lying east of Interstate 64 and U.S. Highway 17 in Virginia may select a 50-day season for Canada geese within the October 1, 1986, to January 20, 1987, framework; the daily bag and possession limits are 2 and 4 Canada geese, respectively. North Carolina and South Carolina may select a 43-day season for Canada geese within a December 20, 1986, to January 31, 1987, framework; the daily bag and possession limits are 1 and 2 Canada geese, respectively. In South Carolina the season on Canada geese is closed in the counties of Abbeville, Allendale, Anderson, Bamberg, Barnwell, Beauford, Cherokee, Chester, Colleton, Edgefield, Fairfield, Greenwood, Hampton, Kershaw, Lancaster, Laurens, Lee, McCormick, Newberry, Oconee, Pickens, Richland, Saluda, Spartenburg, Sumter, Union and York.

Closures on Canada geese: The season for Canada geese is closed in Florida and Georgia.

Snow Geese

Outside Dates, Season Lengths, and Limits: Between October 1, 1986, and January 31, 1987, States in the Atlantic Flyway may select a 90-day season for snow geese (including blue geese); the daily bag and possession limits are 4 and 8, respectively.

Atlantic Brant

Outside Dates, Season Lengths, and Limits: Between October 1, 1986, and

January 20, 1987, States in the Atlantic Flyway may select a 30-day season for Atlantic brant; the daily bag and possession limits are 2 and 4 brant, respectively.

Tundra Swans

In North Carolina an experimental season for tundra swans may be selected subject to the following conditions: (a) the season may be 90 days and must run concurrently with the snow geese season; (b) the State agency must issue and obtain harvest and hunting participation data; and (c) no more than 6,000 permits may be issued, authorizing each permittee to take 1 tundra swan.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

Ducks, Coots, and Mergansers

Outside Dates: Between October 4, 1986, and January 18, 1987, in all States.

Hunting Season: Not more than 40 days.

Canvasbacks: The season on canvasbacks is closed.

Limits: The daily bag limit of ducks is 4, and may include no more than 2 mallards (no more than 1 of which may be female), 1 black duck, 2 wood ducks (except as noted below), 2 pintails, and 1 redhead. The possession limit is 8, including no more than 4 mallards (no more that 2 of which may be females), 2 black ducks, 4 wood ducks (except as noted below), 4 pintails, and 2 redheads.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. The possession limit is 10, only 2 of which may be hooded mergansers.

Coot Limits: The daily bag and possession limits of coots are 15 and 30, respectively.

Point-System Option: As an alternative to conventional bag limits for ducks, a 40-day season with point-system bag and possession limits may be selected within the framework dates prescribed. Point values for species and sexes taken are as follows: the female mallard and black duck count 100 points each; the redhead, wood duck (except as noted below) and hooded merganser count 70 points each; the blue-winged teal, cinnamon teal, wigeon, gadwall, shoveler, scaup, green-winged teal and mergansers (except hooded merganser) count 20 points each; the male mallard, pintail, and all other species of ducks count 35 points each. The daily bag limit is reached when the point value of the last bird taken, added to the sum of the point values of the other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Coot Limits—Point System: Coots have a point value of zero, but the daily bag and possession limits are 15 and 30, respectively, as under the conventional limits.

Early Wood Duck Season Option: Arkansas, Louisiana, Mississippi and Alabama may split their regular duck hunting seasons in such a way that a hunting season not to exceed 9 consecutive days may occur between October 4 and October 15. During this period, under conventional regulations, no special restrictions within the regular daily bag and possession limits established for the Flyway shall apply to wood ducks, and under the point system the point value of wood ducks shall be 25 points. For other species of ducks, daily bag and possession limits shall be the same as established for the Flyway under conventional or point-system regulations. In addition, the extra blue-winged teal option available to States in this Flyway that select conventional regulations and do not have a September teal season may be selected during this period. This exception to the daily bag and possession limits for wood ducks shall not apply to that portion of the duck hunting season that occurs after October 15.

Western Louisiana: In that portion of Louisiana west of a boundary beginning at the Arkansas-Louisiana border on Louisiana Highway 3; then south along Louisiana Highway 3 to Bossier City; then east along Interstate 20 to Minden; then south along Louisiana Highway 7 to Ringgold; then east along Louisiana Highway 4 to Jonesboro; then south along U.S. Highway 167 to Lafayette; then southeast along U.S. Highway 90 to Houma; then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass—the season for ducks, coots and mergansers may extend 5 additional days. If the 5-day extension is selected, and if point-system regulations are selected for the State, point values will be the same as for the rest of the State.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits and shooting hours in the Pymatuning Reservoir area of Ohio will be the same as those selected by Pennsylvania. The area includes Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 known as Woodward Road, on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Zoning

Alabama, Illinois, Indiana, Iowa, Michigan, Missouri, Ohio, Tennessee, and *Wisconsin* may select hunting seasons for ducks, coots and mergansers by zones described as follows:

Alabama: South Zone—Mobile and Baldwin Counties. North Zone—The remainder of Alabama. The season in the South Zone may be split.

Illinois: North Zone—That portion of the State north of a line running east from the Iowa border along Illinois Highway 92 to I–280, east along I–280 to I–80, then east along I–80 to the Indiana border. Central Zone—That portion of the State between the North and South Zone boundries. South Zone—That portion of the State south of a line running east from the Missouri border along the Monroe-Randolph County line to County Highway 856, south along County Highway 856 to Illinois Highway 155, east along Illinois Highway 155 to Illinois Highway 3, north along Illinois Highway 3 to Illinois Highway 159 north along Illinois Highway 159, to Illinois Highway 161, east along Illinois Highway 161 to Illinois Highway 4, north along Illinois Highway 4 to I–70, then east along I–70 to the Indiana border.

Indiana: North Zone: That portion of the State north of a line extending east from the Illinois border along State Highway 18 to U.S. Highway 31, then north along U.S. 31 to U.S. Highway 24, then east along U.S. 24 to Huntington, then southeast along U.S. Highway 224 to the Ohio border. Ohio River Zone: That portion of Indiana south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, then east along State Highway 62 to State Highway 56, then east along State Highway 56 to Vevay, then on State Highway 156 along the Ohio River to North Landing, then north along State Highway 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border. South Zone: That portion of the State between the North and Ohio River Zone boundries. The season in each zone may be split into two segments.

Iowa: North Zone—That portion of Iowa north of Interstate 80. South Zone—the remainder of the State.

Michigan: North Zone—The Upper Peninsula. Southeast Zone—That portion of the Lower Peninsula south and east of a line running north from the Michigan-Ohio border along U.S. Highway 127 to US–27 to South County Line Road in Gratiot County, east along South County Line Road to McClelland Road, north along McClelland Road to M–57, west along M–57 to US–27, north along US–27 to M–20, east along M–20 to

US–10, east along US–10 to M–13, north along M–13 to US–23, north and east along US–23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then due east ten miles into Saginaw Bay, and from that point along a northeast line to the Ontario border. Middle Zone—The remainder of the State. Michigan may split its season in each zone into two segments.

Missouri: North Zone—That portion of Missouri north of a line running east from the Kansas border along U.S. Highway 54 to U.S. Highway 65, south along U.S. 65 to State Highway 32, east along State Highway 32 to State Highway 72, east along State Highway 72 to State Highway 21, south along State Highway 21 to U.S. Highway 60, east along U.S. 60 to State Highway 51, south along State Highway 51 to State Highway 53, south along State Highway 53 to U.S. Highway 62, east along U.S. 62 to I–55, north along I–55 to State Highway 34, then east along State Highway 34 to the Illinois border. South Zone—The remainder of Missouri. Missouri may split its season in each zone into two segments.

Ohio: The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking, Muskingam, Guernsey, Harrison and Jefferson and all counties north thereof. In addition, the North Zone also includes that portion of the Buckeye Lake area in Fairfield and Perry Counties bounded on the west by State Highway 37, on the south by State Highway 204, and on the east by State Highway 13. Ohio River Zone—The counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia, and Meigs. South Zone—That portion of the State between the North and Ohio River Zone boundaries. Ohio may split its season in each zone into two segments.

Tennessee. Reelfoot Zone—Lake and Obion Counties, or a designated portion of that area. State Zone—The remainder of Tennessee. Seasons may be split into two segments in each zone.

Wisconsin: North Zone—That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State Highway 35 to State Highway 25, north along State Highway 25 to U.S. Highway 10, east along U.S. Highway 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan. South Zone—The remainder of Wisconsin. The season in the South Zone may be split into two segments.

Within each State: (1) the same bag limit option must be selected for all zones; and (2) if a special scaup season is selected for a zone, it shall be held outside the regular season in that zone.

Geese

Definition: For the purpose of hunting regulations listed below, the term "geese" also includes brant.

Outside Dates, Season Lengths, and Limits: Between October 4, 1986 (October 1 in Wisconsin) and January 20, 1987, States may select 70-day seasons for geese, with a daily bag limit of 5 geese, to include no more than 2 white-fronted geese. The possession limit is 10 geese, to include no more than 4 white-fronted geese. Regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Outside Dates and Limits on Snow and White-fronted Geese in Arkansas and Louisiana: Between October 4, 1986, and January 31, 1987, Arkansas may hold a 70-day season on snow (including blue) geese. Between October 4, 1986, and February 14, 1987, Louisiana may hold 70-day seasons on snow (including blue) and white-fronted geese by zones established for duck hunting seasons. Daily bag and possession limits are as described above.

Minnesota: In the: (a) Lac Qui Parle Zone (described in State Regulations)—the season for Canada geese closes after 50 days or when 4,500 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose and the possession limit is 2.

(b) Southeastern Zone (described in State regulations)—the season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4.

(c) Remainder of the State—the season for Canada geese may extend for 50 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

Iowa: The season may extend for 70 consecutive days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season for geese in the Southwest Goose Zone (that portion of the State bounded by U.S. Highways 92 and 71) may be held at a different time than the season in the remainder of the State.

Missouri: In the: (a) Swan Lake Zone (described in State regulations)—the season for Canada geese closes after 70 days or when 16,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Southeast Zone (east of U.S. Highway 67 and south of Crystal City)—A 50-day season on Canada geese may be selected between December 1, 1986, and January 20, 1987, with a daily bag limit of 1 Canada goose and a possession limit of 2.

(c) Remainder of the State—the season for Canada geese may extend for 50 days in the respective duck hunting zones. The daily bag limit is 1 Canada goose, and the possession limit is 2.

Wisconsin: The total harvest of Canada geese in the State will be limited to 45,000 birds. In the: (a) Horicon—Central Zone (Columbia, Dodge, Fond Du Lac, Green Lake, Marquette and Winnebago Counties, and the northwest portion of Washington County north of State Highway 33 and west of U.S. Highway 45)—the harvest of Canada geese is limited to 30,000 birds, with 2,000 birds allocated to the Theresa Subzone. The season may not exceed 50 days. In the Theresa Subzone (described in State regulations), the daily bag limit is 1 Canada goose per permittee through October 5 and 1 Canada goose per permittee per day thereafter, up to a season limit of 4. In the remainder of the Horicon-Central Zone, the season limit may not exceed 2 Canada geese per permittee, and the issuance of permits and tags may not exceed 37,000 permits with 1 tag each and 3,000 permits with 2 tags each.

(b) Mississippi River Zone (that portion of the State west of the Burlington-Northern Railroad in Grant, Crawford, Vernon, LaCrosse, Trempealeau, Buffalo, Pepin and Pierce Counties)—the season for Canada geese may extend for 70 days. Limits are 1 Canada goose daily and 2 in possession through November 24, and 2 daily and 4 in possession thereafter.

(c) Northeast Zone (that portion of the North Hunting Zone which includes the Counties of Vilas, Oneida, Lincoln, Marathon, a portion of Wood County, and all counties or portions of counties eastward). The season for Canada geese may not exceed 12 days. The daily bag limit is 1 Canada goose and the possession limit is 2. In Brown County, a special late season to control local populations of giant Canada geese may be held during December 1–31. The daily bag and possession limits during this special season are 2 and 4 birds, respectively.

(d) Southeast Zone (that portion of the South Hunting Zone which includes part of Wood County, Juneau, Sauk, Dan and Green Counties and all counties or portions of counties eastward)—in that portion of the Southeast Zone outside the Horicon-Central tag zone, the season may not exceed 12 days. The daily bag limit is 1 Canada goose and the possession limit is 2. In the Rock Prairie Zone (described in State regulations), a

special late season to harvest giant Canada geese may be held between November 8 and December 7. During the late season, the daily bag limit is 1 Canada goose and the possession limit is 2.

(e) Remainder of the State—the season for Canada geese may not exceed 20 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

In that portion of Wisconsin outside the Horicon-Central Zone, the progress of the Canada goose harvest must be monitored, and the season closed if necessary, to insure that the harvest does not exceed 15,000 birds.

Illinois: The total harvest of Canada geese in the State will be limited to 48,000 birds. In the: (a) Southern Illinois Quota Zone (described in State regulations)—The season for Canada geese will close after 50 days or when 24,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Rend Lake Quota Zone (Franklin and Jefferson Counties)—The season for Canada geese will close after 50 days or when 7,200 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(c) Tri-County area (all of Knox County; the townships of Buckhart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, Putnam and that portion of Banner Township bounded on the north by Illinois Route 9 and on th east by U.S. 24 in Fulton County; the township of Alba, Annawan, Atkinson and Cornwall in Henry County)—The season for Canada geese may not exceed 25 days. The daily bag limit is 1 Canada goose and the possession limit is 4.

(d) Remainder of State—Seasons for Canada geese up to 40 days may be selected by zones established for duck hunting seasons, except that in the South Zone the season will close no later than December 15. The daily bag limit is 1 Canada goose and the possession limit is 4.

Michigan: The total harvest of Canada geese in the State will be limited to 53,000 birds. In the: (a) North Zone—In the counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon, the framework opening date for geese is September 26. In the remainder of the North Zone, the framework opening date is October 4. Throughout the North Zone, the season for Canada geese may extend for 20 days, except at Seney Goose Management Area, where the season may extend for 50 days and the harvest of Canada geese will be limited to 500 birds. The daily bag limit is 1 Canada goose and the possession limit is 2, except at Seney Goose Management Area, where the daily bag and possession limits are 2 and 4, respectively.

(b) Middle Zone: (1) Allegan County Zone (that portion of Allegan County west of U.S. Highway 131)—the season for Canada geese closes after 50 days or when 3,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(2) Muskegon Wastewater Zone (described in State regulations)—the season for Canada geese closes after 50 days or when 500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(3) Remainder of Middle Zone—The season for Canada geese may extend for 30 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) Southeast Zone—The season for Canada geese may extend for 40 days, except at Saginaw County Goose Management Area, where the season may extend for 50 days and the harvest of Canada geese will be limited to 5,000 birds. The daily bag limit is 2 Canada geese and the possession limit is 4.

(d) Southern Michigan Goose Management Area (described in State regulations)—A late Canada goose season of up to 46 days may be held between January 1, 1987, and February 15, 1987. The daily bag limit is 2 Canada geese and the possession limit is 4.

Ohio: The daily bag limit is 2 Canada geese and the possession limit is 4, except that in the counties of Ashtabula, Trumbull, Marion, Wyandot, Lucas, Ottawa, Erie, Sandusky, Mercer and Auglaize, the daily bag limit is 1 Canada goose and the possession limit is 2.

Indiana: The total harvest of Canada geese in the State will be limited to 15,000 birds.

(a) Posey County—The season for Canada geese will close after 50 days or when 1,800 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese and the possession limit is 4.

(b) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Kentucky: In the: (a) West Kentucky Zone (that portion of the State west of a line beginning at the Kentucky-Tennessee border at Fulton, Kentucky, extending northerly along the Purchase Parkway to I–24, east on I–24 to U.S. 641; northerly on U.S. 641 to U.S. 60; northeasterly on U.S. 60 to U.S. 41; and then northerly on U.S. 41 to the Kentucky-Indiana border)—The season for Canada geese may extend for 50 days, and the harvest will be limited to 15,000 birds. Of the 15,000-bird quota, 9,500 birds will be allocated to the Ballard Subzone and 3,000 birds will be allocated to the Henderson-Union Subzone (both subzones described in State regulations). If the quota in either subzone is reached prior to completion of the 50-day season, the season in that subzone will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 50 days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1987.

(b) Remainder of the State—The season may extend for 70 days. The daily bag limit is 2 Canada geese and the possession limit is 4.

Tennessee: In the: (a) Northwest Zone (Lake, Obion, and Weakley Counties, and those portions of Gibson and Dyer Counties not included in the Southwest Zone)—The season may extend for 50 days, and the harvest of Canada geese will be limited to 6,500 birds. Of the 6,500-bird quota, 4,500 birds will be allocated to the Reelfoot Subzone (described in State regulations). If the quota in the Reelfoot Subzone is reached prior to completion of the 50-day season, the season in the subzone will be closed. If this occurs, the season in the remainder of the Northwest Zone may continue for an additional 7 days, not to exceed a total of 50 days. The daily bag limit is 2 Canada geese and the possession limit is 4. The season may extend to January 31, 1987.

(b) Southwest Zone (that portion of the State bounded on the north by State Highways 20 and 104, and on the east by U.S. Highways 45W and 45)—The season for Canada geese may extend for 15 days, with a framework closing date of January 31, 1987. The daily bag limit is 1 Canada goose and the possession limit is 2.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 1 Canada goose and the possession limit is 2, except in that portion west of State Highway 13, where the daily bag and possession limits are 2 and 4, respectively.

Arkansas and Louisiana: The season for Canada geese is closed.

Mississippi: In the: (a) Sardis Zone (described in State regulations)—The

season for Canada geese may extend for 30 days, 10 days of which must occur before December 15, 1986. The daily bag limit is 1 Canada goose and possession limit is 2.

(b) Remainder of the State—The season for Canada geese may not exceed 15 days. The daily bag limit is 1 Canada goose and the possession limit is 2.

In both areas, the framework closing date is January 31, 1987.

Alabama: In Alabama, the daily bag limit is 2 Canada geese and the possession limit is 4.

Missouri, Illinois, Indiana, Kentucky and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese alloted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan Lake Zone in Missouri, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not in excess of 48 hours) as they deem necessary.

Shipping Restriction: In Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton and Carlisle, geese may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the entire Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas and Wyoming (east of the Continental Divide).

Ducks (including mergansers) and Coots

Outside Dates: October 4, 1986, through January 18, 1987.

Canvasbacks: There will be no open season on canvasbacks in the Central Flyway.

Hunting Season: Seasons in the Low Plains Unit may include no more than 51 days. Seasons in the High Plains Mallard Management Unit may include no more than 67 days, provided that the last 16 days may start no earlier than December 13, 1986. The High Plains Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, shall be described in State regulations.

States may split their seasons into 2 or, in lieu of zoning, 3 segments.

Daily Bag and Possession Limits: Conventional limits are 4 ducks daily, including no more than 3 mallards of which no more than 1 may be a female, 3 pintails, 1 redhead, 1 hooded merganser and 2 wood ducks; and 8 in possession, including no more than 6 mallards of which no more than 1 may be a female, 6 pintails, 2 redheads, 2 hooded mergansers and 4 wood ducks.

As an alternative, States may select point system bag and possession limits. Under this system, the daily limit is reached when the point values of the last duck taken and other ducks already taken during that day total 100 or more points. The value of each female mallard, black duck, and mottled duck is 100 points; each wood duck, redhead and hooded merganser, and in Texas only, each black bellied whistling duck and fulvous whistling duck, is 70 points; each blue-winged teal, green-winged teal, cinnamon teal, scaup, gadwall, wigeon, shoveler, and merganser (except the hooded merganser) is 20 points; and of each duck of other species and sexes is 35 points. The possession limit is the equivalant of two daily limits.

Daily bag and possession limits for coots are 15 and 30, respectively.

Zoning: Duck and coot hunting seasons may be selected independently in existing zones as described in the following States:

Montana (Central Flyway portion):

Expirimental Zone 1. The counties of Bighorn, Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland and Yellowstone.

Experimental Zone 2. The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure and Wibaux.

Nebraska (Low Plains portion):

Zone 1. Keya Paha County east of U.S. Highway 183 and all of Boyd County including the adjacent waters of the Niobrara River.

Zone 2. The area bounded by designated highways and political boundaries starting on U.S. 73 at the State Line near Falls City; north to N–67; north through Nemaha to U.S. 73–75; north to U.S. 34; west to the Alvo Road; north to U.S. 6; northeast to N–63; north and west to U.S. 77; north to N–92; west to U.S. 81; south to N–66; west to N–14; south to I–80; west to U.S. 34; west to – 10; south to the State Line; west to U.S. 283; north to N–23; west to N–47; north to U.S. 30; east to N–14; north to N–52; northwesterly to N–91; west to U.S. 281; north to Wheeler County and including all of Wheeler and Garfield Counties and Loup County east of U.S. 183; east on N–70 from Wheeler County to N–14; south to N–39; southeast to N–22; east to U.S. 81; southeast to U.S. 30; east to U.S. 73; north to N–51; east to the State Line; and south and west along the State Line to the point of beginning.

Zone 3. The area, excluding Zone 1, north of Zone 2.

Zone 4. The area south of Zone 2.

New Mexico:

Experimental Zone 1. The Central Flyway portion of New Mexico north of Interstate Highway 40 and U.S. Highway 54.

Experimental Zone 2. The remainder of the Central Flyway portion of New Mexico.

Oklahoma:

Zone 1. That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas-Oklahoma border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I–40, I–40 to U.S. 177, U.S. 177, to OK 33, OK 33 to I–35, I–35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Oklahoma-Kansas state line.

Zone 2. The remainder of the Low Plains.

South Dakota (Low Plains portion):

South Zone. Bon Homme County south of S.D. Highway 50; Charles Mix County south and west of a line formed by S.D. Highway 50 from Douglas County to Geddes, Highways CFAS 6198 and FAS 3207 to Lake Andes, and S.D. Highway 50 to Bon Homme County; Gregory County; and Yankton County west of U.S. Highway 81.

North Zone. The remainder of the Low Plains.

Wyoming (Central Flyway portion):

Zone 1. Sheridan, Johnson, Natrona, Campbell, Crook, Weston, Converse and Niobrara Counties.

Zone 2. Platte, Goshen and Laramie Counties.

Zone 3. Carbon and Albany Counties.

Zone 4. Park, Big Horn, Hot Springs, Washakie and Fremont Counties.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant, "dark geese" includes Canada and white-fronted geese and black brant, and "light geese" includes all others.

Outside Dates: October 4, 1986, through January 18, 1987, for dark geese and October 4, 1986, through February 15, 1987 (Febraury 28, 1987, in New Mexico), for light geese.

Possession Limits: Goose possession limits are twice the daily bag limits (see exception for light geese in the Rio Grande Valley Unit of New Mexico.)

Hunting Seasons: Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 93 days with a daily limit of 5 geese that may include no more than 2 dark geese.

Kansas: For dark geese, no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 30 and no more than 1 Canada goose and 1 white-fronted goose during the remainder of the season.

For Light Goose Unit 1 (that area east of U.S. 75 and north of I–70), no more than 86 days with a daily limit of 5.

For light Goose Unit 2 (the remainder of Kansas), no more than 86 days with a daily limit of 5.

Montana: No more than 93 days with daily limits of 2 geese in Sheridan County and 3 geese in the remainder of the Central Flyway.

Nebraska: For Dark Goose Unit 1 (Boyd, Cedar west of U.S. 81, Keya Paha east of U.S. 183, and Knox Counties), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 14 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 2 (the remainder of the State east of the following highways starting at the South Dakota line; U.S. 183 to NE 2, NE 2 to U.S. 281, and U.S. 281 to Kansas), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 23 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For Dark Goose Unit 3 (that part of the State west of Units 1 and 2), no more than 72 days with daily limits of 2 Canada geese or 1 Canada goose and 1 white-fronted goose through November 23 and no more than 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

New Mexico: For dark geese, no more than 93 days with a daily limit of 2.

For light geese in the Rio Grande Valley Unit (the Central Flyway portion of New Mexico west of highways starting at the Texas line north of El Paso: U.S. 54 to U.S. 60, U.S. 60 to U.S. 285, and U.S. 285 to the Colorado line), no more than 107 days with daily limit of 5 and a possession limit of 20.

For light geese in the remainder of the Central Flyway portion of New Mexico, no more than 93 days with a daily limit of 5.

North Dakota: For dark geese, no more than 72 days with daily limits of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese through November 2 and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 86 days with a daily limit of 5.

Oklahoma: For Dark Goose Unit 1 (that portion of western and southern Oklahoma bounded by the following highways: starting at the Kansas-Oklahoma line, U.S. 77 to U.S. 177, U.S. 177 to OK 33 to U.S. 75, U.S. 75 to Indian Nation Turnpike, Indian Nation Turnpike to U.S. 271, and U.S. 271 to the Oklahoma-Texas line), no more than 72 days with a daily limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For Dark Goose Unit 2 (the remainder of Oklahoma), no more than 72 days with a daily limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 86 days with a daily limit of 5.

South Dakota: For dark geese in the Missouri River Unit (the Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson east of SD Highway 65, Dewey, Gregory, Haakon north of Kirley Road and east of Plum Creek, Hughes, Hyde, Lyman north of Interstate 90 and east of U.S. Highway 83, Potter, Stanley, Sully, Tripp east of U.S. Highway 183, Walworth, and Yankton west of U.S. Highway 81), no more than 79 days with daily limits of 1 Canada goose and 1 white-fronted goose through November 14 and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 86 days with a daily limit of 5.

Texas: West of U.S. 81, no more than 93 days with a daily limit of 5 geese which may include no more than 2 dark geese.

For dark geese east of U.S. 81, no more than 72 days with a daily limit of 1 Canada goose and 1 white-fronted goose.

For light geese east of U.S. 81, no more than 86 days with a daily limit of 5.

Wyoming: For geese in each of 4 Units that coincide with management zones for ducks, no more than 93 days with daily limits of 2.

Tundra Swans

The following States may issue permits authorizing each permittee to take no more than one tundra swan, subject to guidelines in a current, approved management plan and general conditions that each State determine hunter participation and harvest, and specified conditions as follows:

Montana (Central Flyway portion): no more than 500 permits with the season dates concurrent with the season for taking geese.

North Dakota: no more than 1,000 permits with the season dates concurrent with the season for taking ducks.

South Dakota: no more than 500 permits with the season dates concurrent with the season for taking ducks.

Sandhill Cranes

Experimental Season in New Mexico:

Two experimental seasons, not to exceed 8 days each, may be selected during the period October 10–31, 1986, in the Middle Rio Grande Valley Crane Hunt Area bounded by the south boundary of Isleta Pueblo; on the west by Interstate 25 and including all of Sevilleta and Bosque del Apache National Wildlife Refuges; on the east by a dirt road from the northeast corner of Bosque del Apache NWR to the western boundary of the White Sands Missile Range Extension Co-Use (WSMREC) area, by the western WSMREC boundary and the eastern boundary of the Sevilleta NWR to U.S. Highway 60, U.S. 60 to NM Highway 47, and NM 47 to the south boundary of Isleta Pueblo; under the following conditions:

1. Not more than 365 special permits, provided by the State, may be issued for each season. Successful applicants for permits must possess valid Bosque del Apache NWR Hunt Cards or pass a hunter qualification course to be eligible to participate.

2. The bag limit shall be 3 cranes per season.

3. Shooting hours shall be sunrise to sunset and non-toxic shot is required.

4. All provisions of an Operational Hunt Plan, subject to review by the U.S. Fish and Wildlife Service Region 2 and the Central and Pacific Flyway Councils, must be in effect to assure protection of whooping cranes that might occur in the hunting area.

Pacific Flyway

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington and Wyoming (west of the Continental Divide including the Great Divide Basin).

Ducks, Coots, Common Moorhens, and Common Snipe

Outside Dates: Between October 4, 1986, and January 11, 1987.

Hunting Seasons:

Seasons may be split into two segments. Concurrent 79-day seasons on ducks (including mergansers), coots, common moorhens (gallinules) and common snipe may be selected except as subsequently noted. In the Oregon counties of Morrow and Umatilla and in Washington all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County, the seasons may be an additional 7 days.

Duck Limits: The basic daily bag limit is 5 ducks, including no more than 4 mallards but only 1 female mallard, 4 pintails but only 1 female pintail, and either 2 canvasbacks or 2 redheads or 1 of each. The possession limit is twice the daily bag limit.

Coot and Common Moorhen (Gallinule) Limits: The daily bag and possession limit of coots and common moorhens is 25 singly or in the aggregate.

Common Snipe Limits: The daily bag and possession limit of common snipe is 8 and 16, respectively.

California—Waterfowl Zones: Season dates for the Colorado River Zone of California must coincide with season dates selected by Arizona. Season dates for the Northeastern and Southern Zones of California may differ from those in the remainder of the State.

Idaho—Waterfowl Zones: Season dates for Zone 1 and Zone 2 may differ. Waterfowl Zones—Zone 1 includes American Falls Reservoir and adjacent lands, including the Fort Hall Indian Reservation; Zone 2 includes the remainder of the State.

Nevada—Clark County Waterfowl Zone: Season dates for Clark County may differ from those in the remainder of Nevada.

Colorado, Montana, New Mexico and Wyoming—Common Snipe: For States partially within the Flyway a 93-day season for common snipe may be selected to occur between September 1, 1986, and February 28, 1987, and need not be concurrent with the duck season.

Geese (including Brant)

Outside dates, season lengths and limits on geese (including brant): Seasons may be split into two segments. Between October 4, 1986, and January 18, 1987, a 93-day season on geese (except brant in Washington, Oregon and California) may be selected, except as subsequently noted. The basic daily bag and possession limit is 6, provided that the daily bag limit includes no more than 3 white geese (snow, including blue, and Ross' geese) and 3 dark geese (all other species of geese). The basic daily bag and possession limits are proportionately reduced in those areas where special restrictions apply to Canada geese. In Washington and Idaho, the daily bag and possession limits are 3 and 6 geese, respectively. Between October 18 and November 30, 1986, Washington, Oregon and California may select an open season for brant with daily bag and possession limits of 2 and 4 brant, respectively.

Aleutian Canada goose closure: There will be no open season on Aleutian Canada geese. Emergency closures may be invoked for all Canada geese should Aleutain Canada goose distribution patterns or other circumstances justify such actions.

California, Oregon, Washington—Cackling Canada goose closure: There will be no open season on the cackling Canada geese in California, Oregon and Washington.

California—Canada goose and dark goose closures: Three areas in California, described as follows: are restricted in the hunting of certain geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley in that area bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River; then southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45–162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows, there will be no open season for Canada geese. In this area, the season on dark geese must end on or before November 30, 1986.

(3) In the San Joaquin Valley in that area bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate Highway 5; then southerly on Interstate Highway 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning; the hunting season for Canada geese will close no later than November 23.

California (Northeastern Zone)—geese: In the Northeastern Zone of California the season may be from October 11 to January 11, except that white-fronted geese may be taken only during October 11 to November 2. Limits will be 3 geese per day and 6 in possession, of which not more than 1 white-fronted goose or 2 Canada geese shall be in the daily limit and not more than 2 white-fronted geese and 4 Canada geese shall be in possession.

California (Balance of the State Zone)—geese: In the Balance of the State Zone the season may be from November 1 through January 18, except that white-fronted geese may be taken only during November 1 to January 4. Limits shall be 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese (except Aleutian and cackling Canada geese for which the season is closed).

Western Oregon: In those portions of Coos and Curry Counties lying west of U.S. Highway 101 and that portion of Western Oregon north and west of a line formed by State Highway 126 and Interstate Highway 5, except for designated areas, there shall be no open season on Canada geese. In the remainder of Western Oregon, the season and limits shall be the same as those for the Pacific Flyway, except the

seasons in the designated area must end upon attainment of their individual quotas which collectively equal 190 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

Oregon (Lake and Klamath Counties)—geese: In the Oregon counties of Lake and Klamath the season on white-fronted geese will not open until two weeks after the opening date of the general goose season.

Washington and Oregon (Columbia Basin Portions)—geese: In the Washington counties of Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla and Yakima, and in the Oregon counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa and Wasco, the goose season may be an additional 7 days.

Western Washington: In the Washington counties of Island, Skagit, Snohomish, and Whatcom, the season for snow geese may not extend beyond January 1, 1987. In Clark, Cowlitz, Wahkiakum, and Pacific Counties, except for areas to be designated by the State, there shall be no open season on Canada geese. For designated areas the seasons must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a state-issued permit authorizing them to do so.

Idaho, Oregon and Montana—Pacific Population of Canada geese: In that portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater and Idaho Counties); in the Oregon counties of Baker and Malheur; and in Montana (Pacific Flyway portion west of the Continental Divide), the daily bag and possession limits are 2 Canada geese and the season for Canada geese may not extend beyond January 4, 1987.

Montana and Wyoming—Rocky Mountain Population of Canada Geese: In Montana (Pacific Flyway portion east of the Continental Divide) and Wyoming the season may not extend beyond Janaury 4, 1987. In Lincoln, Sweetwater and Sublette Counties, Wyoming, the combined special sandhill crane-Canada goose seasons and the regular goose season shall not exceed 93 days.

Idaho, Colorado and Utah: In that portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border; in Colorado; and in Utah, except Washington County, the daily bag and possession limits are 2 and 4 Canada geese, respectively, and the season for Canada geese may be no more than 86 days and may not extend beyond January 4, 1987.

Nevada: Nevada may designate season dates on geese in Clark County and in Elko County and that portion of White Pine County within Ruby Lake National Wildlife Refuge differing from those in the remainder of the State. In Clark County the season on Canada geese may be no more than 86 days. Except for Clark County the daily bag and possession limits are 2 and 4 Canada geese, respectively. In Clark County the daily bag and possession limits are 2 Canada geese.

Arizona, California, Utah and New Mexico: In California, the Colorado River Zone where the season must be the same as that selected by Arizona and the Southern Zone; in Arizona; in New Mexico; and in Washington County, Utah; the season for Canada geese may be no more than 86 days. The daily bag and possession limit is 2 Canada geese except in that portion of California Department of Fish and Game District 22 within the Souther Zone (i.e. Imperial Valley) where the daily bag and possession limits for Canada geese are 1 and 2, respectively.

Tundra Swans

In Utah, Nevada and Montana, an open season for tundra swans may be selected to the following conditions: (a) The season must run concurrently with the duck season; (b) appropriate State agency must issue permits and obtain harvest and hunter participation data; (c) in Utah, no more than 2,500 permits may be issued, authorizing each permittee to take 1 tundra swan; (d) in Nevada, no more than 650 permits may be issued, authorizing each permittee to take 1 tundra swan in either Churchill, Lyon, or Pershing Counties; (e) in Montana, no more than 500 permits may be issued authorizing each permittee to take 1 tundra swan in either Teton or Cascade Counties.

Sandhill Cranes

Arizona may select an experimental sandhill crane season subject to the conditions specified in the frameworks for early seasons.

Special Falconry Frameworks

Extended Seasons: Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Framework Dates: Seasons must fall within the regular and any special season framework dates.

Daily Bag and Possession Limits: Daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during both regular hunting season and extended falconry seasons.

Regulations Publication: Each State selecting the special season must inform the Service of the season dates and publish said regulations.

Regular Seasons: General hunting regulations, including seasons, hours, and limits, apply to falconry in each State listed in 50 CFR 21.29(k) which does not select an extended falconry season.

Note.—In no instance shall the total number of days in any combination of duck seasons (regular duck season, sea duck season, September teal season, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Dated: August 12, 1986.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-18537 Filed 8-14-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 158
Friday, August 15, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Public Hearings on Proposed Land and Resource Management Plan and Draft Environmental Impact Statement for Los Padres National Forest, CA

Los Padres National Forest (including portions of Monterey, San Luis Obispo, Santa Barbara, Ventura, Kern, and Los Angeles Counties) will hold two public hearings on its Proposed Land and Resource Management Plan and Draft Environmental Impact Statement. The hearings will be held in Salinas and Santa Barbara, California. The public hearings are for the purpose of receiving formal public comments on the two referenced documents. They will be held:

September 11, Thursday, 9–12 a.m. and 2–5 p.m., Santa Barbara: Mural Room, Santa Barbara County Courthouse. Corner of Anapamu and Anacapa Streets, Santa Barbara

September 18, Thursday, 9–12 a.m. and 2–5 p.m., Salinas: Monterey County Board of Supervisors Chambers, 240 Church Street, Second Floor, East Wing

Each hearing will be conducted by a hearing officer. A court reporter will keep a verbatim record of all oral testimony, and it will become part of the comments record on the Proposed Plan and Draft Environmental Impact Statement. Each speaker will be limited to five minutes. Speakers may register at the door at any time during the hearing; speakers will give comments in the order of registration.

The Forest Service will neither respond to comments nor debate issues during the hearings. Forest Service officials will respond to all public comments in the Final Environmental Statement.

The two formal public hearings are part of a larger public involvement effort for the Land Management Planning process. Public comments have also been recorded at the five public meetings held previously. Two additional "listening sessions" will be scheduled prior to the close of the comment period (dates, times, locations to be announced locally).

Written comments should be sent to Forest Supervisor, Los Padres National Forest, Attention: LMP, 6144 Calle Real, Goleta, CA. 93117–2053 by September 30, 1986.

For additional information on the hearings, please contact the Public Affairs Officer or the Planning Officer at the above address or telephone (805) 683–6711.

Erwin N. Ward,

Deputy Forest Supervisor, Los Padres National Forest.

[FR Doc. 86–18434 Filed 8–14–86; 8:45 am]

BILLING CODE 340–11–M

Federal Grain Inspection Service

Official Services in the State of Florida

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: This notice announces that the only application for designation within the State of Florida filed pursuant to Federal Register notices requesting applicants was not in compliance with the application procedures in regulations. The application has been dismissed. FGIS will continue to provide the necessary official services in the entire State of Florida.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the U.S. Grain Standards Act, as amended (Act), specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

FGIS requested applications for official agency designation to provide official services within a specified geographic area in the October 25, 1985, Federal Register (50 FR 43429). Applications were to be postmarked by November 25, 1985; FGIS received no applications for designation by the due date. FGIS again requested applications for designation in the March 3, 1986, Federal Register (51 FR 7303).

Applications were to be postmarked by March 18, 1986; FGIS received one application which was not in compliance with the application procedures in section 800.196(d) of the regulations. FGIS requested information to bring the application into compliance with the regulations.

FGIS received no response from the applicant. Therefore, in accordance with § 800.196(e), the application is dismissed. Pursuant to the Act, FGIS will continue to provide the necessary official services in the entire State of Florida. Persons or firms located in this geographic area requiring official inspection service should contact the FGIS Mobile field office at (205) 690–2144 to obtain such service.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: August 12, 1986.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 86–18483 Filed 8–14–86; 8:45 am]

BILLING CODE 3410–EN–M

COMMISSION ON CIVIL RIGHTS

Iowa, Kansas, Missouri, and Nebraska Advisory Committees; Cancellation of 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 Iowa, Kansas, Missouri, and Nebraska Advisory Committees to the Commission originally scheduled for August 20, 1986,

convening at 9:00 a.m. and adjourning at 5:00 p.m., at the Phillips House Hotel, 106 West 12th Street, Kansas City, Missouri, (FR Doc 86-16962, Page 27066) has been cancelled.

Dated at Washington, DC, August 12, 1986.

Donald A. Deppe,

Program Specialist for Regional Programs.

[FR Doc. 86-18442 Filed 8-14-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping and Countervailing Duty Proceedings; Proposed Change in Format of Federal Register Notices

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Extension of public comment period and postponement of trial implementation.

SUMMARY: On June 27, 1986, the Department of Commerce published notice of a proposed change in format of **Federal Register** notices (51 FR 23453). The notice announced that the Department was considering instituting a new procedure whereby its decisions in antidumping and countervailing duty proceedings would be summarized in the **Federal Register**, and additional information would be provided to the parties to the proceedings and made available to the public. The notice provided for public comments until July 28, 1986, and stated that the Department proposed to institute the new procedure beginning August 1, 1986, on a trial basis. On the basis of the extensive public comments received, the Department has decided to extend the public comment period and postpone the proposed trial implementation date. The public is again invited to submit written comments in ten copies by August 25, 1986, to: Deputy Assistant Secretary for Import Administration, Central Records Unit, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. The Department will thoroughly consider these comments and determine whether to implement the change on a trial basis beginning on or after September 1, 1986.

Dated: August 8, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-18487 Filed 8-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-796-601]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Zimbabwe

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Zimbabwe of carbon steel wire rod (wire rod). The estimated net bounty or grant is 47.33 percent *ad valorem* for all manufacturers, producers, or exporters in Zimbabwe of wire rod.

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of wire rod from Zimbabwe that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit on entries of this product in the amount equal to the estimated net bounty or grant.

EFFECTIVE DATE: August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Lori Cooper, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202)377-2438 or 377-8320.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Zimbabwe of wire rod. For purposes of this final determination, the following programs are found to confer bounties or grants:

- Export Incentive Scheme.
- Export Promotion.
- Government Equity Infusions into Ziscosteel-Zimbabwe Iron & Steel Co. Ltd.

The estimated net bounty or grant is 47.33 percent *ad valorem* for all manufacturers, producers, or exporters in Zimbabwe of wire rod.

Case History

On March 4, 1986, we received a petition in proper form from Armco, Inc., Atlantic Steel Co., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co., filed on behalf of the U.S. industry producing wire rod. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Zimbabwe of wire rod, directly or indirectly, receive benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 24, 1986, we initiated an investigation (51 FR 10906 (March 31, 1986)). We stated that we expected to issue a preliminary determination on or before May 28, 1986.

Since Zimbabwe is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and 303(b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of this merchandise materially injure, or threaten material injury to, a U.S. industry.

On April 1, 1986, we presented a questionnaire to the government of Zimbabwe, in Washington, DC, concerning the petitioners' allegations, and we requested a response by April 30, 1986. This date was extended to May 9, 1986 for the government response and May 12, 1986 for the company responses. On May 22, 1986, we received a partial response from the government of Zimbabwe. No response has been received from the manufacturers, producers, or exporters of wire rod in Zimbabwe.

We reviewed the response of the government of Zimbabwe and determined that it failed to provide even the most basic information requested in all countervailing duty questionnaires, such as copies of the laws and regulations governing the alleged bounty or grant programs. Neither did the response include any of the official government documents and statistical reports requested, nor did it provide any information regarding Zimbabwe's financial system and lending practices. Such information is an essential part of any response, because it provides the Commerce Department (Department) with the information to identify the normal commercial patterns of financial transactions in a given country. With regard to specific questions on the alleged programs, the response consisted of statements that the companies were not eligible to use most

of the alleged bounty or grant programs, and that the government's equity infusions into Ziscosteel-Zimbabwe Iron & Steel Co. Ltd. (Zisco) were commercially reasonable.

Because we had not received a complete and timely response from the respondents, we based our preliminary determination on the best information available, which included information in the petition, in reference materials maintained by the Department and, in one limited instance, in the response. On May 28, 1986, we made our preliminary affirmative determination stating that benefits which constitute bounties or grants are being provided to the manufacturers, producers, or exporters in Zimbabwe of wire rod (51 FR 20327 (June 4, 1986)).

On May 30, 1986, we informed the government of Zimbabwe that we would consider for our final determination a complete response if submitted to the Department no later than June 19, 1986. We received no further response from the government of Zimbabwe or the companies; therefore, our final determination is based upon the best information available, as required by § 355.39 of the Department's regulations (19 CFR 355.39). In seeking the best information available, we have obtained information from independent sources regarding the alleged bounties or grants to supplement information supplied by petitioners.

Scope of Investigation

For purposes of this investigation, the term "carbon steel wire rod" covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch in diameter, nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classifiable under items 607.14, 607.17, 607.22, and 607.23 of the *Tariff Schedules of the United States.*

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" (49 FR 18006 (April 26, 1984)).

The response provided by the government of Zimbabwe in this investigation was incomplete and untimely. Furthermore, no response was received from the manufacturers, producers, or exporters of wire rod in Zimbabwe. Therefore, for purposes of this final determination, we are using the best information available as required under § 355.39 of our regulations (19 CFR 355.39).

The Department has no record of past countervailing duty investigations or administrative reviews involving Zimbabwe; therefore, we are unable to include such information in estimating the benefit from programs alleged in the petition to be bounties or grants. Because we did not receive a complete response in time to verify the information submitted, we sought information from available sources to determine the countervailability and level of benefits of the programs under investigation. As best information available, we also used the estimates of benefits included in the petition. For equity infusions into Zisco, we used information for the years 1982–85 obtained from the company's published annual reports and other sources. For the sales value used in calculating the *ad valorem* rates for the domestic bounties or grants, we used, as best information available, the total sales value for Zisco, as provided in the response. We used this value because petitioners provided no information on total sales value, and because we were unable to obtain this figure from public sources.

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1985. Based upon our analysis of the petition and the best information available, we determine the following:

I. Programs Determined To Confer Bounties Or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Zimbabwe of wire rod under the following programs:

A. Export Incentive Scheme

Petitioners allege that, under the Export Incentive Scheme, the Zimbabwean wire rod industry receives the following benefits:

- a tax-free payment equal to at least nine percent of the f.o.b. value of qualifying exported goods;
- bonus allocations of foreign exchange calculated at the rate of one percent of the f.o.b. value of the exporter's manufactured exports; and
- a tax-free payment of five percent of the value of exports within a given period, which are over and above the company's exports registered for the same period during the previous year.

Based upon the best information available, we determine that the companies under investigation received a tax-free payment equal to at least nine percent of the f.o.b. value of qualifying exported goods, resulting in an estimated net bounty or grant of nine percent *ad valorem*, and that they also received bonus allocations of foreign exchange calculated at the rate of one percent of the f.o.b. value of manufactured exports, resulting in an estimated net bounty or grant of one percent *ad valorem*.

Based upon the best information available, we determine that the companies under investigation received an additional tax-free payment of five percent of the increase in the value of exports between 1984 and 1985. To calculate the benefit from this payment, we took five percent of the difference between the value of the 1984 and 1985 exports of wire rod to the United States, as reported in the Department of Commerce Special Steel Summary Invoice data. We allocated that amount over the value of exports of wire rod to the United States in 1985, resulting in an estimated net bounty or grant of 0.51 percent *ad valorem*.

Therefore, to calculate the total estimated net bounty or grant received through the Export Incentive Scheme, we summed the *ad valorem* rates found under each component to arrive at an estimated net bounty or grant of 10.51 percent *ad valorem*.

B. Export Promotion

Petitioners allege that the Zimbabwean wire rod industry benefits from export promotional assistance, including financial assistance for participation in trade expositions, from the Export Promotion Section of the Ministry of Trade and Commerce.

The respondents did not provide an adequate response in this case, and petitioners were unable to provide information as to whether and to what extent the wire rod industry receives countervailable benefits under this program. Furthermore, the Department has been unable to discover any information on this program through independent research. Given this complete lack of information, we are applying, as best information available, the *ad valorem* subsidy rate found for the Export Incentive Scheme, the only other export bounty or grant program examined in this investigation. On this basis, we determine an estimated net bounty or grant of 10.51 percent *ad valorem*.

C. Government Equity Infusions into Ziscosteel-Zimbabwe Iron & Steel Co. Ltd.

Petitioners allege that Zisco, which is 88.98 percent state-owned, has benefitted from government equity infusions and other government financial assistance, including cash grants, on terms inconsistent with commercial considerations. Petitioners also allege that Zisco has been uncreditworthy and unequityworthy since 1982. Information submitted in the petition indicates that Zisco has been incurring losses since at least 1982.

In making our preliminary determination, we relied on information contained in the petition and in reference materials maintained by the Department as the best information available. Since that time, through independent research, we have obtained information to supplement or replace much of that which was used for the preliminary determination, including Zisco's published, audited financial statements for 1982–84.

For the final determination, we are using, as the best information available, information from the financial statements and other sources, which shows that, during 1985, the government of Zimbabwe converted loans it had made to Zisco into stock holdings, or equity, at the rate of one Zimbabwe dollar per share. The total amount of the conversion during 1985 was $Z178,235,000. Our review of Zisco's audited financial statements revealed no other government equity infusions or other financial assistance for the years 1982–85. Based on this information, government assistance, in the form of equity infusions, totaled $Z178,235,000 million for the period 1982–1985.

Our research has confirmed that Zisco has been incurring large losses since 1981. Therefore, as best information available, we are assuming that Zisco has been and continues to be unequityworthy. Using information from the petition, and from publications and materials maintained and obtained by the Department, we calculated the benefit from these infusions according to the rate of return shortfall methodology outlined in the Subsidies Appendix.

Neither the petitioners nor the Department was able to obtain or develop information on Zisco's rate of return on equity during the review period. Therefore, as best information available, we are using Zisco's rate of return on equity for 1984, which we have developed from the audited 1984 financial statement. For the national average rate of return, we used the 1985 average monthly earnings yield for industrial shares of 6.38 percent, as published in the Reserve Bank of Zimbabwe's *Quarterly Economic and Statistical Review* (December 1985). We multiplied the rate of return shortfall by the total amount of equity received by Zisco between 1982–85. We then allocated the aggregate benefit over the value of Zisco's total sales in 1985, resulting in an estimated net bounty or grant of 26.31 percent *ad valorem*.

II. Program Determined Not To Confer Bounties or Grants

We determine that bounties or grants are not being provided to the manufacturers, producers, or exporters in Zimbabwe of wire rod under the following program:

Training Investment Allowance

Petitioners allege that the Zimbabwean wire rod industry may benefit from a training investment allowance, available to businesses which construct new buildings and purchase new equipment. The allowance, which is to be used exclusively for employee training, is equivalent to fifty percent of the costs of new buildings and/or equipment.

Respondents did not provide an adequate response in this case, and petitioners were unable to provide information as to whether and to what extent the wire rod industry receives countervailable benefits under this program. However, through independent research, the Department has obtained copies of relevant portions of the Zimbabwe Income Tax Act of 1974 and amendments thereto. These laws state that the training investment allowance is a tax deduction available to all taxpayers for any training building, any addition or alteration to any training building, or any training equipment which is brought into use during the year of assessment. Therefore, as best information available, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, and thus is not countervailable.

III. Program Determined Not To Be Used

We determine that the following program was not used by the manufacturers, producers, or exporters in Zimbabwe of wire rod:

Regional Tax Incentives

Petitioners allege that the Zimbabwean wire rod industry benefits from special tax incentives to encourage commercial and industrial development in prescribed "growth point areas". Industries in the designated areas benefit from special depreciation rates, including an investment allowance of 15 percent on buildings, machinery, and furniture, and a special initial allowance of 100 percent, instead of the normal 2.5 percent, on new commercial buildings.

Respondents did not provide an adequate response in this case, and petitioners were unable to provide information as to whether and to what extent the wire rod industry receives countervailable benefits under this program. However, the Department has obtained copies of relevant sections of the Zimbabwe Income Tax Act, relating to benefits to companies located in growth point areas. Under these laws, companies located in a growth point area are eligible for:

- A special initial allowance, or tax deduction, of 100 percent on new commercial or industrial buildings, and
- An investment allowance equal to 15 percent on the construction of, or additions or alterations to, commercial or industrial buildings, or staff housing, and on new or unused articles, implements, machinery, and utensils used in a growth point business.

We have also obtained a copy of the law prescribing the designated growth point areas and a Zimbabwe Department of Physical Planning map showing the location of the growth point areas. Annex B, page 10, of the petition specifies the location of the headquarters and plant facilities of the companies under investigation. Based upon our review of the list and of the map, neither company is located in a growth point area. Therefore, as best information available, we determine that this program was not used.

Petitioners' Comment

Petitioners argue that both statute and case law require the Department to make its final determination on the basis of the best information available, given the respondents' failure to submit an adequate response.

DOC Position

We agree. See the "Case History" and "Analysis of Programs" sections of this notice.

Best Information Available

In accordance with section 776(b) of the Act, we used the best information available in making our final determination.

Administrative Procedures

We afforded interested parties an opportunity to submit written views in accordance with § 355.34 of our regulations (19 CFR 355.34). Written comments were received from counsel

for the petitioners on July 14, 1986. We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing in accordance with 355.35 of our regulations (19 CFR 355.35). No hearing was requested.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative determination shall remain in effect until further notice. The estimated net bounty or grant is 47.33 percent *ad valorem*. In accordance with section 706(a)(4) of the Act, we are directing the U.S. Customs Service to require a cash deposit in the amount indicated above for each entry of wire rod from Zimbabwe which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register, and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Lee W. Mercer,

Deputy Assistant Secretary for Trade Administration.

August 11, 1986.

[FR Doc. 86-18488 Filed 8-14-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-001]

Leather Wearing Apparel From Mexico; Final Results of Countervailing Duty Administrative Review

Correction.

In FR Doc. 86-17910, beginning on page 28611, in the issue of Friday, August 8, 1986, make the following corrections:

1. On page 28611, second column, under "Scope of Review", fourth line, "791.620" should read "791.7620".

2. On page 28612, third column, under "Final Results of the Review", second paragraph, eighth line, "exporter" should read "exported".

BILLING CODE 1505-01-M

[Docket No. 3644-01 to 03; 3644-51 to 60]

Charles J. McVey, Jr., et al., Respondent; Facts

On August 4, 1983, a charging letter was issued against Charles McVey, Jr., individually and doing business as Vanguard International, Ltd., S.A., Facilities Management, Ltd., and Land Resources Management, Inc. On September 30, 1983, additional charging letters were issued against Yuri Boyarinov and Rolf Lienhard. The charges against Boyarinov and Lienhard were subsequently dropped. The charging letters alleged the following:

Between March 1979 and March 1982, Charles McVey, Jr. exported 29 shipments of high technology goods from the United States to Switzerland and Mexico. McVey and his accomplices, Lienhard and Boyarinov, knew each shipment was intended for reexport to the Soviet Union in violation of § 387.4 of the Export Administration Regulations (the Regulations).

While doing business as Facilities Management, Ltd., McVey made false representations to the Office of Export Administration in preparation of export control documents. Additionally, McVey made certain shipments without applying for or obtaining a validated export license, when he knew or should have known one was required, in violation of section 387.6 of the Regulations.

McVey caused, aided and abetted the commission of acts to violate the Regulations and conspired with Lienhard and Boyarinov to violate the Regulations in violation of §§ 387.2 and 387.3

McVey submitted a general denial in response to the charging letter. The other two respondents filed no answers. On October 13, 1983, a Temporary Denial Order (TDO) was issued against all the principals and related persons. The related persons were Janice McVey, Charles McVey, III, Michael McVey, Societe Anonyme Technologie Spatiale, Frank AG, ICOHAGE International, Handelgeselleschaft, and Interprojekt, Geselleschaft. On March 20, 1984, Frank AG was deleted as a related person.

On January 13, 1986, related persons Janice McVey, Charles McVey, III, and Michael McVey filed a motion to vacate the TDO against them and requested a hearing. The hearing date was set on May 8, 1986. A March 28, 1986 Order deleted Michael McVey from the TDO since he did not fit the definition of related person. Additionally, on March 28, 1986, the Administrative Law Judge accepted Agency counsel's Notice of Withdrawal of the Charging Letters with respect to Rolf Lienhard and Yuri Boyarinov. These cases were closed and the TDO was modified to reflect this change.

On May 8, 1986, the Respondent did not appear at the TDO hearing. The hearing was adjourned and Agency counsel was instructed to file a written submission to the Administrative Law Judge. Respondent's counsel were informed that they were no longer considered counsel of record and deemed to have withdrawn from the case. Agency counsel did file a written submission that was consistent with the filing requirement, but which was incomplete in other respects. Agency counsel served the Respondent's counsel who had been removed from the case. The Administrative Law Judge dismissed the case on May 30 because he considered the timeliness of the submissions to be inadequate. Upon reconsideration, the Administrative Law Judge reinstated the charges.

The Administrative Law Judge handled this matter as a default proceeding. He based his conclusions of Law and Fact on Agency counsel's submissions and the criminal indictment handed down against the Respondent, in the District Court for the Central District of California.

In his Decision and Order, the Administrative Law Judge assessed a civil penalty in the amount of $1,240,000 and denied Respondent Charles J. McVey, Jr. all export privileges for a period of 30 years. Export privileges of his corporations and varidous related persons were also denied.

Issues

1. Was the default proceeding appropriate and conducted in such a manner as to afford respondents procedural due process?

2. Was the penalty imposed by the Administrative Law Judge justified?

Discussion

This matter involved some procedural complexity brought about by withdrawal of counsel by one side and incomplete filing by the other. However, I am satisfied that all charged parties received procedural due process in this matter. They were given the opportunity to respond to the administrative charges and temporary denial orders instituted against them and none chose to do so. The handling of this matter as a default proceeding was proper under the circumstances.

The Resondent, an international businessman and entrepreneur, travelled widely to negotiate and execute personally, and on behalf of his corporations Land Resources Management, Inc. and Facilities Management, Ltd., contracts to export high technology equipment to various nations, including the Soviet Union. The latter, in 28 instances, were without the required validated export license. Additionally, he misrepresented and concealed material facts in 27 such shipments. Through his firms Vanguard International Ltd., S.A., Land Resources Management, Inc. and Facilities Management, Ltd., he aided and abetted the purchase and illegal export of some 28 international shipments. Some detailed background and summary of

the principal Respondent Charles J. McVey, Jr.'s *Modus Operandi* is set forth in Agency's Exhibit No. 1, an Order of the United States District Court for the Central District of California. The evidence presented in some 49 exhibits, as explained by Agency counsel in his Submission for the Record and Proposed findings, establish the various violations and the participation of Vanguard International, Ltd., S.A., Land Resources Management, Inc. and Facilities Management, Ltd.

Findings

I affirm the Administrative Law Judge's finding and conclusion that the Respondent Charles J. McVey, Jr., engaged in export activities in violation of the Act and Regulations as alleged in the charging letter, and that his daughter Janice McVey and son Charles McVey III, who acted with him and at his behest in his illegal export business affairs, are persons related by trade or occupation to him.

The Respondent Charles J. McVey, Jr. was given ample opportunity to contest these proceedings and was thus accorded procedural due process. Apparently, he fled the United States in 1982 to avoid criminal prosecution and has lived in Switzerland since then. Therefore, I find that entering a default judgement is required in this matter.

Considering the grave nature of these uncontested offenses, I find that the penalties assessed were justified. The purpose for imposing such penalties is to deter future violations of the Export Administration Act. Justice is well served by imposing civil penalties upon persons who choose to compromise the national security of the United States.

I affirm the Administrative Law Judge's extension, for 30 days from the date of his Order, of the 1-year period set forth in section 13(c) for concluding this proceeding.

Charges against Rolf Lienhard and Yuri Boyarinov were properly withdrawn.

Order

It is hereby ordered:

I. Respondent Charles J. McVey, Jr., is assessed a civil penalty in the amount of $1,240,000, which sum shall be due and payable 20 days after the date of this Order.

II. All outstanding validated export licenses in which the Respondent or any related person appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the office of Export Licensing for cancellation.

III. For a period of 30 years from the date that this Order becomes final, Respondent

Charles J. McVey, Jr.
last known address
c/o Societe Anonyme Technologie Spatiale (SATS), Les Maladieres, 2022 Bevaix NE., Switzerland
doing business as
Vanguard International, Ltd., S.A., 18331 Jacotal, Villa Park, CA 92667
and
Facilities Management, Ltd., 18331 Jacotal, Villa Park, CA 92667
and
Land Resources Management, Inc., 18331 Jacotal, Villa Park, CA 92667

his/its/their successors or assignees, officers, partners, representatives, agents, and employees are hereby denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations. Without limitation of the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to a validated export license application, (b) in preparing or filing any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend to those commodities and technical data that are subject to the Export Administration Act of 1979, 50 U.S.C. app. SS 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (1985), and the Regulations.

IV. Such denial of export privileges shall extend not only to Respondent, but to his agents, employees and, to the extent warranted, his successors or assigns. After notice and opportunity for comment, such denial may also be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services. Those parties now known to be affiliated with the Respondent, and which are accordingly subject to the provisions of this Order, are:

Janice McVey, c/o Land Resources Management, 18331 Jacotal, Villa Park, CA 92667

Charles J. McVey, III, c/o Land Resources Management, 18331 Jacotal, Villa Park, CA 92667

Having reviewed the Record and based on the facts addressed in this matter, I affirm the Order of the Administrative Law Judge. This constitutes final agency action in this matter.

Dated: August 11, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 86-18489 Filed 8-14-86; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1986; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1986 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 15, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On August 2, and November 15, 1985 and May 23, and June 6, 1986 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 31407, 50 FR 47245, 51 FR 18925 and FR 20687) of proposed additions to Procurement List 1986, October 15, 1985 (50 FR 41809).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1986:

Commodities

Smock, Medical Assistant—6532–00–117–7487, 6532–00–117–7542, 6532–00–117–7543, 6532–00–117–7546.

Handkerchief, Man's—8440–00–261–4246.

E. R. Alley, Jr.,

Acting Executive Director.

[FR Doc. 86–18475 Filed 8–14–86; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement; Additional Agreement for Cooperation; U.S.A. and European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/SW(EU)–139, for the retransfer of 170 kilograms of uranium, containing 33.915 kilograms of the isotope uranium-235, from the Federal Republic of Germany to Sweden, for use in the R–2 reactor.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 12, 1986.

David B. Waller,

Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86–18479 Filed 8–14–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP86–25–002, et al.]

Natural Gas Certificate Filings; Great Lakes Gas Transmission Co., et al.

Take notice that the following filings have been made with the Commission:

1. Great Lakes Gas Transmission Company

[Docket No. CP86–25–002]

August 8, 1986.

Take notice that on August 1, 1986, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed pursuant to section 7(c) of the Natural Gas Act, a petition to amend a certificate of public convenience and necessity so as to be able to increase deliveries of natural gas for TransCanada PipeLines Limited (TransCanada) at a point of interconnection between the facilities of Michigan Consolidated Gas Company (MichCon) and Great Lakes located at Belle River Mills, Michigan (Belle River Mills Delivery Point), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Currently, pursuant to the Order Issuing Certificate dated December 27, 1985, in the above-referenced docket, Great Lakes delivers up to 13,000 Mcf of natural gas per day to MichCon at the Belle River Mills Delivery Point. In exchange for these volumes, MichCon causes thermally equivalent volumes of ethane to be delivered to Esso Chemical Canada, a Division of Imperial Oil Limited (Esso), in Sarnia, Ontario. The volumes of natural gas that Esso causes to be delivered to MichCon are transported and delivered by Great Lakes, at the request of TransCanada, under Great Lakes' existing Rate Schedule T–4 included in Great Lakes' FERC Gas Tariff, Original Volume No. 2 (T–4 Tariff).

Due to imbalances in the exchange not previously anticipated by MichCon, MichCon has requested that volumes in a quantity up to 50,000 Mcf of natural gas per day or such mutually agreed upon quantity be delivered to it under its exchange arrangement. However, MichCon would not be increasing its current annual volumes under this arrangement (4.8 Bcf of natural gas per year) so that average daily receipts would not exceed 13,000 Mcf per day under this arrangement. Further, there is no change in the contract quantity under the T–4 Tariff as a result of this arrangement. Therefore, Great Lakes requests authorization to deliver up to 50,000 Mcf per day or such greater mutually agreed upon quantity to MichCon at the Belle River Mills Delivery Point.

Comment date: August 22, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Northwest Central Pipeline Corporation

[Docket No. CP86–640–000]

August 11, 1986.

Take notice that on July 29, 1986, Northwest Central Pipeline Corporation (Applicant), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86–640–000 an application pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new sales tap for the direct interruptible sale of natural gas to Homer E. Mercer, in Seward County, Kansas, for use in irrigation operations under the blanket certificate authorization issued in Docket No. CP82–479–000, as amended, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that this sale would not significantly affect its overall gas supply or have any detrimental effect on existing customers. Applicant also states that the projected volume of delivery would be approximately 3,000 Mcf per year and 25 Mcf on a peak day. It is asserted that the total estimated cost of the facilities would be $6,350, which would be paid from available cash.

Comment date: September 22, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86–127–001]

August 11, 1986.

Take notice that on July 28, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001,

filed a petition to amend the order issued June 20, 1986, in Docket No. CP86–127–000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the petition to amend which is on file with the commission and open to public inspection.

Tennessee states that in Docket No. CP86–127–000 it was authorized to transport up to 10,000 Mcf of natural gas per day for Panhandle from reserves produced in East Cameron Block 220, offshore Louisiana, which Panhandle has a right to purchase. Tennessee receives such quantities at a receipt point located on Tennessee's S.V. 509A–1301 line in Vermilion Block 241, offshore Louisiana. Tennessee transports these quantities of gas for the account of Panhandle on an interruptible basis to an existing interconnection between Tennessee's facilities and the Blue Water Project's facilities, which are jointly owned by Tennessee and Columbia Gulf Transmission Corporation (Columbia Gulf) in Vermilion Block 245, offshore Louisiana.

By its petition to amend Tennessee requests authorization to provide such transportation service to Panhandle on a dekatherm basis and increase the transportation quantity from 10,000 Mcf of natural gas per day to 20,000 dekatherms of natural gas per day.

Tennessee would charge a quantity charge of 3.90 cents per dekatherm delivered and a liquids charge of 23.17 cents per barrel for the transportation of liquids.

Comment date: September 2, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–18419 Filed 8–14–86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8633–002]

Madera-Chowchilla Power Authority; Surrender of Preliminary Permit

August 11, 1986.

Take notice that Madera-Chowchilla Power Authority, permittee for the proposed North Fork Willow Creek Project No. 8633, has requested that its preliminary permit be terminated. The preliminary permit was issued on January 22, 1986, and would have expired on December 31, 1989. The project would have been located on Willow Creek in Madera County, California.

The permittee filed the request on July 22, 1986, and the preliminary permit for Project No. 8633 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–18420 Filed 8–14–86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9639–002]

Southern Star Hydro Limited; Surrender of Preliminary Permit

August 11, 1986.

Take notice that Southern Start Hydro Limited, permittee for the proposed Mono Star Water Power Project No. 9639, has requested that its preliminary permit be terminated. The preliminary permit was issued on March 12, 1986, and would have expired on February 28, 1989. The project would have been located on Deep Creek and Cottonwood Creek in Mono County, California.

The permittee filed the request on July 21, 1986, and the preliminary permit for Project No. 9639 shall remain in effect through the thirtienth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–18421 Filed 8–14–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI79–620–002, et al.]

Exxon Corp., et al.; Applications for Abandonment and Blanket Limited-Term Certificate

August 12, 1986.

Take notice that each of the applicants listed herein have filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service or for a blanket limited-term certificate to sell natural gas in interstate commerce, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis,

pursuant to section 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protests with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, . 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI79–620–002, B, July 25, 1986 [1]	Exxon Corp., P.O. Box 2180, Houston, Texas 77252–2180.	Southern Natural Gas Co., Mississippi Canyon Area, Blocks 268 and 312, Offshore Louisiana.	[2]	
CI86–608–000, A, July 25, 1986 [1]	....do....	[3]		
CI86–626–000, B, Aug. 1, 1986 [4]	Marion Corp., et al., P.O. Box 3027, Mobile, Alabama 36652.	United Gas Pipe Line Co., Gwinville Field, Jefferson Davis County, Mississippi.	[5]	
CI86–634–000, B, Aug. 4, 1986	Energy Production Service, Inc., P.O. Box 158, Jackson, Mississippi 39205–0158.	United Gas Pipe Line Co., Gwinville Field, Jefferson Davis County, Mississippi.	[6]	

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[1] Supplemental information received August 4, 1986.

[2] Applicant requests partial limited-term abandonment for a term through July 17, 1989, for a sale made to Southern under a contract dated August 16, 1979, on file as Applicant's FERC Gas Rate Schedule No. 656. Applicant states that pursuant to a July 17, 1986, letter agreement Southern has agreed to release gas in excess of Southern's daily requirements and priced equal to or greater than the NGPA section 109 price. Applicant also states that such letter agreement provides that Southern would receive take-or-pay credit for any released gas sold elsewhere. Applicant states that its gas qualifies under NGPA sections 109 and 102(d) and that its respective deliverability is 120 MMcf/d and 15 MMcf/d. Applicant states that the July 17, 1986, letter agreement shall remain in effect until the earlier of three years from the date of the agreement, or the expiration date of the requested partial abandonment authority. Applicant states that it is subject to substantially reduced takes and will experience drainage and shut-in production if its application is not expeditiously considered.

[3] Applicant requests in Docket No. CI86–608–000 a limited-term certificate with pre-granted abandonment to make sales for resale in interstate commerce of gas which is released and is subject to the limited-term abandonment in Docket No. CI79–620–002.

[4] Supplemental information received August 7, 1986.

[5] Applicant, a small producer certificate holder in Docket No. CS71–568, requests limited-term abandonment for a sale made to United pursuant to a contract dated June 9, 1977. Applicant states that pursuant to a July 5, 1986, release agreement United will receive take-or-pay credit for all volumes released and sold elsewhere. Applicant also requests pregranted abandonment authority for all gas covered by the release agreement. Applicant requests that the term of such authorization end on the earlier of July 31, 1987, or the effective date of cancellation of the release agreement between United and Applicant. Applicant states that the requests herein are made on behalf of itself and all other working interest owners in the one well in which Applicant does not own 100% of the working interest. Such other interest owners, according to Applicant, are parties to a joint operating agreement with Applicant as the operator. As such, Applicant states that its contract with United covers all the supplies attributable to such interest owners. Applicant states that it is subjected to substantially reduced takes without payment. Applicant states that in 1985 United took 191,490 Mcf or approximately 11% of the deliverability, and in the first half of 1986 took 27,480 Mcf or approximately 3% of deliverability. Applicant states that the subject gas qualifies under NGPA section 104 Post-1974.

[6] Pursuant to the expedited procedures set forth in Section 2.77 of the Commission's rules, Applicant, as operator of the Gwinville Gas Unit 106–A well, has filed, on behalf of working interest owners covered under small producer certificates in Docket Nos. CS75–331 and CS71–1066, for limited-term abandonment of sales to United, for a two-year period. Applicant states that the contract involved expired February 20, 1986, and United has advised Applicant that United will not purchase any gas in the foreseeable future and will not contest abandonment for a two-year period. Applicant states that the subject well is classified as a NGPA section 106 gas well and has an estimated deliverability of 550 Mcf per day, but that the well has been shut-in since February, 1986. Applicant states it is subject to substantially reduced takes without payment since United discontinued taking gas in February, 1986, and is not paying for gas not taken.

[FR Doc. 86–18422 Filed 8–14–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA84–29–001]

Iowa Electric Light and Power Co.; Proceeding Under Part 41 of the Commission's Regulations

August 11, 1986.

Take notice that on July 2, 1986, Iowa Electric Light and Power Company (Iowa Electric) responded to a letter order of the Commission issued on June 3, 1986.[1] In the June 3rd letter order, the Commission noted Iowa Electric's disagreement with staff recommendations concerning Iowa Electric's recovery of spent nuclear fuel disposal costs through its wholesale fuel adjustment clause billings. In its July 2nd response, Iowa Electric states that it consents to the disposition of this issue in accordance with the shortened procedures provided for under Part 41 of the Commission's regulations.[2]

Therefore, any interested party, including the Commission's staff, may file a memorandum of facts and arguments as prescribed in sections 41.3 through 41.5 of the Commission's regulations (18 CFR 41.3–41.5). A memorandum may be accompanied by a motion to intervene in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The following procedural schedule is established:

(1) Initial memoranda and motions to intervene shall be due no later than 30 days after the date of publication of this notice in the **Federal Register**; and

(2) Reply memoranda shall be due no later than 20 days thereafter.

All briefs and motions to intervene must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–18423 Filed 8–14–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP85–57–010]

Natural Gas Pipeline Company of America; Filing

August 11, 1986.

Take notice that on July 28, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing Seventh Revised Sheet No. 5E to be a part of its FERC Gas Tariff, Thrid Revised Volume No. 1.

Natural states that the purpose of this sheet is to set out the threshold percentages and discount rates applicable to Rate Schedule IOS for the month of August, 1986, and that the filing is being made in accordance with the provisions of Rate Schedule IOS which was authorized by FERC order issued March 13, 1986 in Docket No. CP85–57–003.

Natural requests waiver of the Commission's regulations to the extent

[1] 35 FERC ¶ 61,314.

[2] 18 CFR Part 41. On July 18, 1986, Iowa Electric filed a memorandum of facts and arguments concerning the staff recommendations at issue. At its option, Iowa Electric may file an initial memorandum in accordance with the procedural schedule established in this notice or it may designate its July 18th memorandum as its initial memorandum. In any event, the company is directed to file a verification to its memorandum as required by section 41.5 of the regulations.

necessary to permit the enclosed tariff sheet to become effective August 1, 1986. Natural has mailed copies of this filing to its jurisdictional customers and 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 (1985)) All such motions or protests should be filed on or before August 18, 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 proceedings. 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. 86-18424 Filed 8-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-145-000]

Northwest Pipeline Corp.; Filing to Defer the Filing Date for Purchased Gas Cost Adjustment

August 11, 1986.

Take notice that on July 31, 1986, Northwest Pipeline Corporation (Northwest) requested that the Federal Energy Regulatory Commission (Commission) allow it to defer until September 14, 1986, its purchased gas cost adjustment (PGA) filing which normally would be made on or before August 16, 1986, and to make any change in rates attributable thereto effective on November 1, 1986, rather that October 1, 1986. To accomplish this, Northwest requests waiver of certain requirements of the Commission's regulations and of Article 16 of Northwest's FERC Gas Tariff, First Revised Volume No. 1.

Northwest states that the reason for this deferral is because it is engaged in nogotations with its Canadian pipeline supplier, Westcoast Transmission Company Ltd. (Westcoast). Since Northwest and Westcoast have not yet agreed on the specific terms of an agreement to be effective November 1, 1986, an accurate estimate of Canadian gas costs cannot be made for inclusion in an August 16, 1986 filing.

Northwest further states that the granting of its request would result in only a one month delay in making its regular PGA filing and would extend its current PGA period by only one month, thereby affecting just the October deferral period. In the event of a substantial change in gas cost or operating conditions on Northwest's system, an adjustment in rate for the month of October can be made under section 16.11 of Northwest's FERC Gas Tariff to minimize the impact on Northwest's customers.

Northwest has discussed this proposal with its customers, and none of them opposes it. In fact, a number of Northwest's major customers support it.

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 385.211 (1985)). All such motions or protests should be filed on or before August 18, 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. 86-18425 Filed 8-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-3-29-000, TA85-1-29-000, TA86-1-29-000, TA86-1-29-002, TA86-5-29-000, RP83-137-000 and CP85-190-000]

Transcontinental Gas Pipe Line Corp.; Proposed Offer of Settlement

August 8, 1986.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) filed on May 13, 1986, a revised Stipulation and Agreement in the above-captioned proceedings. The settlement offer, if approved, will permit Transco to operate as an open access transporter pursuant to Order No. 436. The rates, terms and conditions, under which Transco will implement Order No. 436, are also established in the settlement.

Any person desiring to intervene shall do so within 15 days of the date of publication of this notice in the **Federal Register.** Any person seeking intervention who has not commented and who wishes to file comments to the proposed Stipulation and Agreement shall also do so within 15 days of the date of publication of this notice in the **Federal Register.** Reply Comments may be filed 10 days later.

Kenneth F. Plumb,

Secretary.

[FR Doc. 18426 Filed 8-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-309-000, et al.]

Arizona Public Service Company et al.; Electric Rate and Corporate Regulation Filings

August 11, 1986.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER86-309-000]

Take notice that on July 28, 1986, Arizona Public Service Company (APS) tendered for filing a Revision to Amendment No. 1 to its Wholesale Power Supply Agreement with the United States of America, Bureau of Indian Affairs on behalf of the Colorado River Indian Irrigation Project (BIA). The Revision to Amendment No. 1 is tendered for filing in response to an Order from the Commission, Issued June 19, 1986.

The current rate of service to BIA contains provisions for the application of an Arizona Transaction Privilege Tax. The Revision to Amendment No. 1 eliminates this tax, effective on the date the Transaction Privilege Tax exemption became effective, May 2, 1984.

In response to the Order, APS has refunded the monies collected from BIA from May 2, 1984 through July 14, 1986, including interest, in accordance with 18 CFR 35.19(a).

Copies of this filing have been served upon the Arizona Corporation Commission and the BIA.

Comment date: August 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Arizona Public Service Company

[Docket No. ER86-310-002]

Take notice that on July 28, 1986, Arizona Public Service Company ("APS") tendered for filing a Revision to Amendment No. 1 to its Wholesale Power Supply Agreement with the United States of America, Bureau of Indian Affairs on behalf of the San Carlos Indian Irrigation Project ("BIA"). The Revision to Amendment No. 1 is tendered for filing in response to an Order from the Commission, issued June 19, 1986.

The current rate of service to BIA contains provisions for the application of an Arizona Transaction Privilege Tax.

The Revision to Amendment No. 1 eliminates this tax, effective on the date the Transaction Privilege Tax exemption became effective, May 2, 1984.

In response to the Order, APS has refunded the monies collected from BIA from May 2, 1984 through July 14, 1986, including interest, in accordance with 18 CFR 35.19(a).

Copies of this filing have been served upon the Arizona Corporation Commission and the BIA.

Comment date: August 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. New England Hydro-Transmission Corporation, New England Hydro-Transmission Electric Company, New England Power Company, Boston Edison Company

[Docket No. ER86-629-000]

Take notice that on July 31, 1986, New England Hydro-Transmission Corporation (New Hampshire Hydro), New England Hydro-Transmission Electric Company, Incorporated (New England Hydro), New England Power Company (NEP) and Boston Edison Company (BECO), tendered for filing proposed new contracts which, when accepted, will permit the participating New England utilities to expand the interconnection between these utilities and the system of Hydro-Quebec so as to obtain access to and the benefits of additional hydroelectric energy.

The contracts filed with this Commission for approval are: (1) Phase II New Hampshire Transmission Facilities Support Agreement, as amended, between New Hampshire Hydro and the participating New England utilities; (2) Phase II Massachusetts Transmission Facilities Support Agreement, as amended, between New England Hydro and the participating New England utilities; (3) Phase II New England Power AC Facilities Support Agreement, as amended, between NEP and the participating New England utilities; (4) Phase II Boston Edison AC Facilities Support Agreement, as amended, between BECO and the participating New England utilities; (5) Lease between NEP and New Hampshire Hydro and NEP (7) Lease between NEP and New England Hydro.

The filing states that construction of the 690 MW Phase I interconnection between New England utilities and Hydro-Quebec is nearly complete and expected to be placed in service in August, 1986. Phase II of the project, the subject of the filing, contemplates the construction of additional major transmission facilities to increase the capacity of the interconnection to 2000 MW. The facilities to be constructed include (1) the extension of the Phase I direct current (DC) transmission line along existing rights-of-way from Monroe, New Hampshire to Ayer, Massachusetts, a distance of 133 miles, (2) an 1800 MW converter terminal at the terminus of the DC line in Massachusetts and (3) reinforcement of the existing transmission system in Massachusetts so that it will be able to accept the additional power. The estimated total cost for these facilities is approximately $550 million and the filing letter indicates that substantial expenditures will also be made by Hydro-Quebec in Canada.

The filing also states that Phase II of the interconnection will provide for a purchase of firm energy from Hydro-Quebec beginning in 1990 for a period of 10 years at a rate of 7 billion Kilowatthours per year. The energy will be purchased at a discount from displaced energy costs, will thereby reduce participant's fuel costs, should defer the need for construction of expensive new generation and creates the potential for additional benefits such as emergency transfer for mutual reliability purposes.

Revenue and cost of service estimates, as well as supporting testimony, are provided with the submittal. The Applicants have also requested certain waivers of the Commission's regulations so that the contracts submitted may become effective October 1, 1986.

Comment date: August 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Company

[Docket No. ER86-202-001]

Take notice that on July 28, 1986, Montaup Electric Company (Montaup) tendered for filing a compliance report pursuant to the Commission's order of June 27, 1986 directing Montaup to make refunds through credit to the customers' bills. This credit was applied to the bills dated July 11, 1986 for M-Rate electric service provided in June, 1986.

Comment date: August 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North 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 Commisison and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-18418 Filed 8-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-41-001]

Algonquin Gas Transmission Co.; Motion To Place Tariff Sheets Into Effect After Suspension

August 12, 1986

Take notice that on July 30, 1986, Algonquin Gas Transmission Company (Algonquin Gas) tendered for filing a Motion To Place Tariff Sheets Into Effect After Suspension. 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 August 5, 1986. The tariff sheets, identified on Appendix A, were filed as part of Algonquin Gas' January 29, 1986, rate filing. They were suspended until August 1, 1986, by the Commission's order in Docket No. RP86-41-000 which issued February 26, 1986.

Algonquin Gas also filed the following amended tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Substitute Fifteenth Revised Sheet No. 201
Substitute Thirteenth Revised Sheet No. 203
Substitute Ninth Revised Sheet No. 204
Substitute Sixth Revised Sheet No. 205
Substitute Ninth Revised Sheet No. 211
Substitute Ninth Revised Sheet No. 241
Substitute First Revised Sheet No. 631-A

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 (1985)). All such motions or protests should be filed on or before August 19, 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.

Appendix A—List of Tariff Sheets Being Moved Into Effect

Substitute Fifteenth Revised Sheet No. 201 [1]
Substitute Thirteenth Revised Sheet No. 203 [1]
Substitute Ninth Revised Sheet No. 204 [1]
Substitute Sixth Revised Sheet No. 205 [1]
Substitute Ninth Revised Sheet No. 211 [1]
Second Revised Sheet No. 221
Third Revised Sheet No. 222
Substitute Ninth Revised Sheet No. 241 [1]
First Revised Sheet No. 304
Fifth Revised Sheet No. 311
Second Revised Sheet No. 313
Second Revised Sheet No. 325
First Revised Sheet No. 361
First Revised Sheet No. 362
First Revised Sheet No. 363
First Revised Sheet No. 364
First Revised Sheet No. 365
First Revised Sheet No. 366
First Revised Sheet No. 371
First Revised Sheet No. 372
First Revised Sheet No. 373
First Revised Sheet No. 374
First Revised Sheet No. 375
First Revised Sheet No. 379
First Revised Sheet No. 384
Second Revised Sheet No. 386
Second Revised Sheet No. 403
Third Revised Sheet No. 404
First Revised Sheet No. 503
First Revised Sheet No. 513
Second Revised Sheet No. 512
First Revised Sheet No. 533
Second Revised Sheet No. 631
Substitute First Revised Sheet No. 631-A [2]
Original Sheet No. 649
Original Sheet No. 650
Original Sheets Nos. 651-699
Fourth Sheet No. 700
Second Revised Sheet No. 701
Second Revised Sheet No. 711
First Revised Sheet No. 746
Original Revised Sheet No. 793
Third Revised Sheet No. 801
Fourth Revised Sheet No. 802
Third Revised Sheet No. 803
Third Revised Sheet No. 804
Fourth Revised Sheet No. 805
First Revised Sheet No. 806

[1] Substitute tariff sheets amended to reflect current cost of purchased gas.

[2] Amended to eliminate Section 17.4B—Reimbursement of Contingent Gas Cost as ordered by Commission order dated May 30, 1986 in Docket Nos. RP86-73-000 and RP86-41-000.

[FR Doc. 86-18505 Filed 8-14-86 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA-86-4-4-000, 001, and TA86-3-4-002]

Granite State Gas Transmission, Inc.; Proposed Changes in Rates

August 12, 1986.

Take notice that on August 5, 1986, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1 containing changes in rates for effectiveness on the dates shown below:

Tariff sheets	Proposed Effective Dates
Substitute Sixteenth Revised Sheet No. 7.	July 1, 1986.
Second Substitute Sixteenth Revised Sheet No. 7.	September 1, 1986.
Substitute Fourteenth Revised Sheet No. 7.	January 1, 1986.

According to Granite State, the proposed rate adjustments are submitted pursuant to the purchased gas cost adjustment provision in its tariff and the certificate issued to Granite State in Docket No. CP84-50-000. (*Boundary Gas, Inc., et al.*, 26 FERC ¶ 61,114 (1984) Granite State further states that the revised rates on Substitute Sixteenth Revised Sheet No. 7, for effectiveness on July 1, 1986, are submitted to comply with a condition accepting its previously filed July 1, 1986 purchased gas cost adjustment that required Granite State to adjust its rates to track any changes that the Commission ordered in Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) Docket Nos. TA86-3-9-000 and 001. According to Granite State, Tennessee filed revised rates for sales to Granite State, and others, on July 25, 1986, in Docket No. TA86-3-9-002, and Granite State has adjusted its rates accordingly.

Granite State further states that the proposed rates on Second Substitute Sixteenth Revised Sheet No. 7 propose an out-of-cycle purchased gas cost adjustment for effectiveness on September 1, 1986 primarily to track the reduced cost of its purchases from Boundary Gas Inc., and an adjustment in spot market purchases from Tenngasco Corporation.

According to Granite State the revised rates on Substitute Fourteenth Revised Sheet No. 7 reflect the effect of retroactive reductions made by Tennessee and Algonquin Gas Transmission Company in transportation charges incurred by Granite State for the transportation of gas purchased from Boundary Gas, Inc. and Consolidated Gas Transmission Corporation. The revised rates on Substitute Fourteenth Revised Sheet No. 7 adjust the Transportation Cost Adjustment, effective January 1, 1986, to reflect the changes in the transporters' charges that were made retroactively effective.

Granite State further states that its proposed rates are applicable to its two affiliated distribution company customers: Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities). According to Granite State, the revised rates on Substitute Sixteenth Revised Sheet No. 7 result in a further reduction of $177,341 annually for sales to Bay State and $38,288 annually for sales to Northern Utilities in addition to the reductions already effective under its July 1, 1986 purchased gas cost adjustment filing. It is further stated that the out-of-cycle purchased gas cost adjustment on Second Substitute Sixteenth Revised Sheet No. 7, proposed for effectiveness on September 11, 1986, result in a further reduction of $3,714,908 annually in the rates for sales to Bay State and an annual increase of $76,080 in the rates for sales to Northern Utilities when compared with the adjusted July 1, 1986 rates. Finally, it is stated that the revised Transportation Cost Adjustment on Substitute Fourteenth Revised Sheet No. 7 results in an annual reduction of $801,555 in transportation costs that are applicable to sales to Bay State.

According to Granite State, copies of the filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 211 and 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 19, 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. 86-18506 Filed 8-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-250-001]

Ozark Gas Transmission System; Compliance Filing

August 12, 1986.

Take notice that on July 31, 1986, Ozark Gas Transmission System (Ozark) tendered for filing Original Sheet Nos. 6 and 8 to its FERC Gas Tariff, Original Volume No. 1. 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 unitl August 4, 1986.

Ozark has filed Original Sheet Nos. 6 and 7 to comply with the Commission's July 29, 1986, order requiring Ozark to file a revised tariff sheet EAT-1 containing a minimum commodity rate for interruptible service based upon variable costs. Ozark states it does not have any measurable variable costs within the contemplation of § 284.7 of the regulations. Ozark therefore proposes a minimum rate of 1¢ per Mcf. The proposed effective date of these sheets is July 29, 1986.

The Commission order also required Ozark to file a tariff sheet applicable to firm transportation service. Ozark states that as to firm transportation service, Original Sheet Nos. 4 and 5 of its FERC Gas Tariff are applicable within the constraints of Opinion No. 125 and Ozark's debt securities and those sheets will be utilized for such service.

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 (1985)). All such motions or protests should be filed on or before August 19, 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 or file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-18508 Filed 8-14-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA86-6-17-000, 001, and TA86-5-17-002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariffs

August 12, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on August 5, 1986 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, six copies each of the following tariff sheets:

Substitute Eightieth Revised Sheet No. 14
Substitute Eightieth Revised Sheet No. 14A
Substitute Eightieth Revised Sheet No. 14B
Substitute Eightieth Revised Sheet No. 14C
Substitute Eightieth Revised Sheet No. 14D

On July 1, 1986, Texas Eastern filed revised tariff sheets reflecting its semiannual purchased gas adjustment filing ("PGA"), with a proposed effective date of August 1, 1986. The above tariff sheets are issued to replace corresponding tariff sheets which were conditionally accepted by the Commission in its "Order Accepting And Suspending Tariff Sheets Subject To Refund And Conditions" issued July 31, 1986 in Docket Nos. TA86-5-17-000 and TA86-5-17-001 ("July 31 Order"). The tariff sheets purport to comply with the requirements of ordering paragraph (A)(1) of the Commission's July 31 Order as well as incorporating changes in gas costs as set forth therein.

The out-of-cycle PGA filing results from recent "market-out" actions taken by Texas Eastern that were not known at the time the July 1, 1986 PGA was filed. Effective August 1, 1986, Texas Eastern invoked the provisions of its gas purchase contracts to market-out to a base contract price of $1.45 per MMBtu, plus contractually authorized taxes, for field supply contracts containing market responsive pricing provisions. The above listed tariff sheets make specific adjustments to the July 1, 1986 filing to reflect reductions in the cost of gas attributable to Texas Eastern's exercise of market-out provisions effective August 1, 1986, and several changes in Texas Eastern's supply mix.

The impact of the instant filing on Texas Eastern's rates is a reduction of $.0966/dth in the commodity component of Texas Eastern's sales rates.

Pursuant to ordering paragraph (A)(1) of the Commission's July 31 Order the above tariff sheets purport to reflect Contract Adjustment Demand Rates which were filed with the Commission on July 11, 1986 in Docket No. RP86-61 to comply with the Commission's Orders in such docket issued May 7, 1986 and June 26, 1986.

The proposed effective date of the above tariff sheets is August 1, 1986. Texas Eastern alleges that good cause is shown for waiver of the Commission's notice requirements in order to accommodate the proposed effective date because of the substantial gas cost reduction which the proposed tariff sheets will implement.

If the Commission should not permit the effective date of the above tariff sheets to be August 1 (the effective date of Texas Eastern's recent market-out action), Texas Eastern requests an alternative effective date of August 5, 1986, the date of the instant filing. It alleges that such an effective date is likewise warranted so as to timely reflect the impact of market-out actions and several changes in supply mix on the Texas Eastern system.

In the event the Commission does not permit an August 1 effective date, Texas Eastern has submitted alternate tariff sheets as follows:

To Be Effective August 1, 1986

Alternate Substitute Eightieth Revised Sheet No. 14
Alternate Substitute Eightieth Revised Sheet No. 14A
Alternate Substitute Eightieth Revised Sheet No. 14B
Alternate Substitute Eightieth Revised Sheet No. 14C
Alternate Substitute Eightieth Revised Sheet No. 14D

These tariff sheets include the Contract Adjustment Demand Rates as required by ordering paragraph (A)(1) of the Commission's July 31 Order and do not reflect the August 1 market-out.

To Be Effective August 5, 1986

Revised Alternate Substitute Eightieth Revised Sheet No. 14
Revised Alternate Substitute Eightieth Revised Sheet No. 14A
Revised Alternate Substitute Eightieth Revised Sheet No. 14B
Revised Alternate Substitute Eightieth Revised Sheet No. 14C
Revised Alternate Substitute Eightieth Revised Sheet No. 14D

These tariff sheets include the Contract Adjustment Demand Rates as required by ordering paragraph (A)(1) of the Commission's July 31 Order and reflect the August 1 market-out action.

Texas Eastern has requested a waiver of the provisions of its tariff and any Regulations that the Commission may deem necessary to accept the above tariff sheets to be effective on August 1, 1986, coincident with the effectiveness of Texas Eastern's exercise of market-out provisions, or alternatively on August 5, 1986, the date of its filing and consistent with prior waiver orders by the Commission for such out-of-time market-out PGA rate reductions.

Pursuant to ordering paragraph (A)(2) of the Commission's July 31, Order, Texas Eastern has indicated that it has previously filed with the Commission all workpapers supporting Order No. 94 costs.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state 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, NW., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 19, 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. 86-18507 Filed 8-14-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Petition To Preempt the State of New York's Minimum Efficiency Standard for Heat Pumps

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice.

SUMMARY: The Department of Energy gives notice that by letter issued August 5, 1986, DOE denied a petition from the Air Conditioning and Refrigeration Institute (ARI) requesting the Secretary of Energy to prescribe a rule superseding New York State's minimum energy efficiency standard for heat pumps.

The petition, submitted by ARI on behalf of ARI, Borg Warner Central Environmental Systems, Inc., Lennox Industries, American Standard, and Rheem Manufacturing Company, was filed pursuant to section 327(b)(1) of the Energy Policy and Conservation Act, Pub. L. 94-163, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619. A copy of the decision letter of denial which describes the petition and states the reasons for the DOE action, appears as an Appendix to this notice.

Issued in Washington, DC, August 5, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

August 5, 1986.

Mr. Joseph M. McGuire,

Director of Planning, Management and Government Affairs, Aid Conditioning and Refrigeration Institute, 1501 Wilson Boulevard, 6th Floor, Arlington, Virginia 22209.

Dear Mr. McGuire: On March 18, 1985, the Department of Energy received a petition (dated March 15, 1985) submitted on behalf of the Air Conditioning and Refrigeration Institute (ARI). On July 15, 1985, ARI added Borg Warner Central Environmental Systems, Inc., Lennox Industries, American Standard and Rheem Manufacturing Company as party-petitioners in the proceeding. On September 17, 1985, DOE received certification (dated September 13, 1985) from ARI's General Counsel that the petition and the amendment had been served on the New York State Energy Office. ARI's petition was deemed filed on September 17, 1985, upon notification of receipt of the certification. Section 430.42 of DOE's regulations requires that a petition for a rule to supersede a State or local regulation be served upon the State agency or department whose regulation the petitioner seeks to supersede.

The petition seeks, pursuant to section 327(b)(1) of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act (referred to as the Act), supersession of New York State's 8.5 Seasonal Energy Efficiency Ratio (SEER) standard for heat pumps manufactured after September 1, 1984, as required by section 16-118(4)(c) of New York State's Energy Law.

On January 23, 1986, DOE published the petition in the **Federal Register** (51 FR 3097) and provided a comment period through February 24, 1986. The Department received comments from one party, the New York State Energy Office (NYSEO), in which the NYSEO disputes the petitioners' claims and asserts that the petition fails to show that there is no significant State interest sufficient to justify New York's regulation and that the regulation unduly burdens interstate commerce.

For the following reasons, the petition is denied.

Under section 327(b)(1) of the Act, any person subject to a State energy efficiency standard may petition the Secretary of Energy to prescribe a rule superseding such State regulation, in whole or in part. The Secretary, after consideration of the petition, the views of the affected State, and the comments of any interested persons, shall issue the requested rule, only if the Secretary finds that there is no significant State or local interest sufficient to justify such State regulation and the State regulation unduly burdens interstate commerce.

The petition has been reviewed carefully. The arguments as presented are unpersuasive and are not supported by sufficient factual information for DOE to determine, as required by section 327(b)(1) of the Act, that there is no significant State interest to justify New York's 8.5 SEER standard for heat pumps and that the standard imposes an undue burden on interstate commerce.

With respect to "significant State interest," the petitioners do not dispute the fact that energy is being saved, only the amount of energy saved. The petitioners, using ARI data, state that the energy savings that can be attributed to the 8.5 SEER standard are 0.00002 of New York's total consumption and that based on New York's population of 17,598,000 people paying an average rate of $0.1108/Kwh, the cost savings would be 12 cents per person. The NYSEO argues that the 8.5 SEER standard saves energy and is part of the State's comprehensive effort. It maintain that a heat pump complying with 8.5 SEER requirement for models manufactured after September 1, 1984, saves 1734 Kwh per year over a model that meets the 7.5 SEER requirement applicable to models manufactured after September 1, 1982. Based on climate variations and energy costs within the State, the NYSEO estimates an annual energy cost savings of between $128 and $273 per unit. Nothing in the Act or in DOE's regulations requires a State standard to meet or exceed an energy savings threshold.

The petitioners also assert that market forces, not the standard, have been responsible for increasing levels in heat pump efficieny. The NYSEO asserts that market forces alone cannot ensure applicance efficiency since it appears that increasing levels of efficiency are not the priority they once were with some homebuilders and consumers. The NYSEO emphasizes that a standard is needed to protect New York consumers from inefficient heat pumps, such as models currently available with SEERs of 5.95. While DOE acknowledges that consumer demand and other market forces have contributed to the rise in heat pump efficiency, the New York standard precludes certain less efficient models from the State's marketplace.

The petitioners also contend that New York lacks a credible enforcement program, demonstrating a lack of significant State interest and placing law abiding persons in a potentially disadvantageous competitive

position. The NYSEO diputes this contention and maintains that it conducts unannounced visits to retailers, wholesalers and distributors of appliances covered by New York's energy efficiency standards. In addition, it reports that a random sample of construction plans and specifications for new building construction routinely reviewed by the State showed no instance of installation of non-complying heat pumps. The petitioners provide no data to support their claim and do not persuade DOE that there is, in fact, widespread unprosecuted evasion of the standard which could undermine a significant State interest.

With respect to "undue burden on interstate commerce," the petitioners allege that New York's standard will lessen competition, claiming that small manufacturers will not be able to compete effectively with larger manufacturers because the New York standard results in some manufacturers having only a few models that meet the standard. Defining a "full line" of products as "a line of products manufactured in small capacity increments so that there is a unit capacity within approximately plus or minus 3,000 Btu/h of any building load," the petitioners cite ARI data that for single package heat pumps, only three companies that market heat pumps in New York offer a "full line" of products that meet or exceed the 8.5 SEER standard, and for split system heat pumps, only eight out of 20 manufacturers that sell heat pumps in New York have a "ful line" of products that meet or exceed the 8.5 SEER standard. Since most dealers stock only one or two brands of products, the petitioners predict that dealers will tend to choose those manufacturers offering a "full line" of products. Therefore, the petitioners contend that those companies with incomplete product offerings will be placed at a competitive disadvantage in the New York market.

The NYSEO, however, points out that 33 of the 40 companies listed in ARI's *July 1—December 31, 1985, Directory of Certified Unitary Air-Source Heat Pumps* have marketed product in New York since before the 1984 standard took effect and that "none of the manufacturers who sold product in New York prior to the 8.5 SEER requirement taking effect have been excluded from the New York market by virtue of this standard applicable to models manufactured after September 1, 1984." *

While the petitioners state that most manufacturers are precluded from the New York market because of the State standard, they have not presented evidence to support that claim. Neither the petitioners nor the ARI data, in the petition or during the comment period, indicated which manufacturers market heat pumps in New York, the number and type of units marketed, the impact of the standard on heat pump sales or which manufacturers have left the New York market as a result of the 8.5 SEER standard. Furthermore, since New York represents only 2.5 percent of the market, it is likely some manufacturers have historically elected not to participate in the New York market.

The petitioners' claim of undue burden on interstate commerce is weakened by the inconsistent argument to the effect that market forces have caused steady increases in efficiency which make the standard unnecessary.

The petitioners also argue that the absence of a hardship provision with respect to such a stringent standard undermines the legal validity of the standard and contributes to an undue burden on interstate commerce. The NYSEO disputes this contention, maintaining that the technical and manufacturing capabilities needed to achieve the standard are already reflected in current production facilities and that since the standard became effective, it has not received any manufacturer requests for special treatment based on capacity or other technical characteristics. The NYSEO also reports no complaints from consumers or the building industry regarding the absence of complying units.

DOE rejects the petitioners' argument concerning the lack of a hardship provision. The lack of a provision in New York's law to grant hardship relief in no way invalidates the legality of the statute. Clearly, the granting of such variances is within the purview of the New York State legislature. Nothing in the Act or DOE's regulations assigns the Department the responsibility to decide whether or not a State should provide such relief. It is up to the State of New York to determine what is in the best interests of its citizens. Furthermore, the fact that New York's law has no provision for hardship variances does not demonstrate that the law creates an undue burden on interstate commerce.

Pursuant to § 430.49 of DOE's regulations, this decision is a final DOE determination. Section 430.49 provides that any person adversely affected by such a DOE determination may seek judicial review.

Yours truly,

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-18441 Filed 8-14-86; 8:45 am]

BILLING CODE 6450-01-M

* The NYSEO report that one heat pump manufacturer, not included in the 33 cited above, is currently undergoing liquidation for reasons unrelated to New York energy efficiency standards.

Western Area Power Administration

Proposed Post-1989 Allocation of Power; Pick-Sloan Missouri Basin Program; Western Division and Fryingpan-Arkansas Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Extension of time to submit comments on the Proposed Post-1989 Allocations of power from the Pick-Sloan Missouri Basin Program and the Fryingpan-Arkansas Project to September 15, 1986.

SUMMARY: On May 27, 1986, the Western Area Power Administration (Western) published the Proposed Post-1989 Allocations; Pick-Sloan Missouri Basin Program and the Fryingpan-Arkansas Project (Proposed Post–1989 Allocations) in the **Federal Register** (51 FR 19080). One of the stipulations set forth in this **Federal Register** notice was that comments on the Proposed Post-1989 Allocations would be accepted until July 28, 1986. Notice is hereby given that the deadline for customers to make comments on the Proposed Post-1989 Allocations is extended until September 15, 1986.

DATE: Comments must be received in writing no later than the close of business on September 15, 1986.

ADDRESS: Comments should be sent to: Mr. Mark N. Silverman, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, Phone: (303) 224–7201.

Issued at Golden, Colorado, August 7, 1986.

William H. Clagett,

Administrator.

[FR Doc. 86-18504 Filed 8-14-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3065-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 28, 1986 through August 1, 1986 pursuant to the Environmental

Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. D-AFS-K65083-00, Rating EC2, Lake Tahoe Basin Mgmt. Unit Nat'l Forest Land and Resource Mgmt. Plan, NV. SUMMARY: EPA expressed concerns because additional information is needed on Lake Tahoe Basin air quality problems. The Forest Service indicated to EPA staff that much of the information is available and would be incorporated into the final EIS.

ERP No. DS-FHW-L40049-OR, Rating EC2, 6th and 7th Ave. Couplet/OR-99 Extension, Garfield St. to West 11 Ave./OR-126/Florence-Eugene Highway, New Alternative—Highway 99 to Seneca Rd., OR. SUMMARY: Overall, EPA's original comments and rating remain unchanged. This supplemental EIS adequately describes the affected environment and environmental consequences of the new alternatives presented. EPA has no specific objections relating to these new options.

ERP No. D-NOA-C90012-PR, Rating EC2, Puerto Rico Nat'l Estuarine Sanctuary System, Humacao Site, Designation and Implementation, PR. SUMMARY: EPA supports the proposed Humacao site management plan, but has identified the need for additional information on potential offsite water quality impacts, hazardous waste contamination from a nearby Superfund site, and impacts on existing sewage or water facilities from the proposed visitor center.

Final EISs

ERP No. F-AFS-K65080-00, Toiyabe Nat'l Forest, Land and Resource Mgmt. Plan, NV. SUMMARY: The final EIS addressed EPA's prior concerns. EPA asked to be kept informed of the progress in carrying out mitigation measures identified in the Record of Decision.

ERP No. F-CDB-C89025-NY, Brooklyn Renaissance Plaza Development, Construction, Special Permit, UDAG, NY. SUMMARY: EPA believes that the final EIS does not fully resolve our concerns regarding Carbon Monoxide (CO) National Ambient Air Quality Standard attainment. Mitigation provided in the final EIS does not assure CO attainment by December 31, 1987. Accordingly, EPA requested additional information prior to issuance of the Record of Decision to resolve our concerns.

ERP No. FS-CDB-K89058-CA, Oakland Chinatown Redevelopment Project, Construction, Additional Information, Grant, CA. SUMMARY: EPA requested that the Record of Decision contain commitments to implement mitigation measures to relieve traffic congestion and air quality impacts. EPA also requested that it be kept informed of the progress in carrying out mitigation measures adopted in the Decision.

ERP No. FS-COE-F34002-MN, Twin Valley Lake Wild Rice River Flood Control Project, Fish and Wildlife Compensation Plan, Water Quality Studies and Section 404(B)(1) Evaluation, Additional Information, MN. SUMMARY: EPA's review resulted in concerns related to reservoir and downstream water quality. Upstream nonpoint source and sediment loading controls were recommended to reduce the possibility of adverse water quality impacts.

ERP No. F-FHW-K40099-HI, Makai Blvd./Nimitz Highway Improvement, Middle Street to Pier 18, Oahu Is., HI. SUMMARY: EPA expressed continuing concerns about potential adverse impacts to coastal and surface water quality, and requested a comitment by FHWA to implement drainage system improvements in the Record Decision.

ERP No. F-SCS-G36132-TX, Choctaw Creek Watershed Protection, Flood Prevention and Recreation Plan, TX. SUMMARY: EPA has no objections to the proposed action with proper implementatoin of the mitigation measures as described.

Amended Notice

The following review should have appeared in the FR Notice published on August 8, 1986.

ERP No. D-AFS-J82007-MT, Rating EC1, Gallatin Nat'l Forest, Noxious Weed Control, Mgmt. and Treatment, MT. SUMMARY: EPA supports the choice of the integrated pest management alternative. EPA has the following concerns: (1) Retreatment should be discussed; (2) Procedures to prevent initial establishment of noxious weeds should be included as part of integrated pest management; (3) Site specific steps should be designed to insure that herbicide contamination of surface and ground water does not occur; (4) Emergency response actions should be discussed; and (5) disposal of empty pesticide containers, spills, etc. should be in accordance with applicable state/Federal requirements.

Dated: August 12, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-18492 Filed 8-14-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3065-2]

Designation of Ocean Dredged Material Disposal Site (ODMDS) Off Pascagoula, Mississippi and Intent To Prepare a Supplemental Environmental Impact Statement

AGENCY: Environmental Protection Agency (EPA), Region IV.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement (SEIS) on the final designation of an ODMDS off Pascagoula, Mississippi.

Purpose: The U.S. EPA, Region IV, in accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA) and in cooperation with the U.S. Army Corps of Engineers, Mobile District, will prepare a Supplemental Draft EIS on the designation of an ocean dredged material disposal site for Pascagoula, Mississippi. This notice of intent is issued pursuant to 40 CFR Part 1501.7 (Regulations for Implementing the Procedural Provisions of the NEPA), section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

For further information and to be placed on the project mailing list contact: Mr. Reginald Rogers, Ocean Dumping Coordinator, U.S. Environmental Protection Agency, Region IV, 345 Courtland St., NE., Atlanta, Georgia 30365; Phone No. (404) 347-4467, FTS 257-4467, or Mr. Paul Bradley, U.S. Army Corps of Engineers District, P.O. Box 2288 Mobile, Alabama 36628-0001; Phone No. (205) 694-3860, FTS 537-3860.

SUMMARY: This SEIS will supplement the draft EIS, released January 13, 1983, currently being finalized for EPA interim approved offshore disposal areas for Pensacola, Florida; Mobile, Alabama; and Gulfport, Mississippi. The Corps of Engineers has indicated that final designation of a Pascagoula ODMDS is required to insure the availability of the most feasible and environmentally acceptable disposal site for anticipated future work requiring ocean disposal. The SEIS will consider the impacts which could result from continued

offshore disposal of dredged material at the existing EPA interim designated site south of Horn Island Pass, Mississippi, and potential alternative sites.

Need for Action

The Corps of Engineers, Mobile District, has requested that an EPA approved ocean disposal site be designated in the Pascagoula area to receive dredged materials when ocean disposal is the preferred disposal alternative.

Alternatives

The following alternatives are being considered:

1. No action;
2. Final designation of the interim designated ODMDS off Pascagoula;
3. Locating and using alternative ocean disposal sites.

Scoping

A scoping meeting is not contemplated. Scoping will be accomplished by correspondence with affected federal, state, and local agencies, and with interested parties.

Estimated Date of SEIS Release: October 1986.

Responsible Official: Jack E. Ravan, Regional Administrator.

Dated: August 12, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-18493 Filed 8-14-86; 8:45 am]

BILLING CODE 6560-01-M

[ER-FRL-3065-3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed August 4, 1986 Through August 8, 1986 Pursuant to 40 CFR 1506.9

EIS No. 860308, Draft COE, NM Cuchillo Dam/Cuchillo Creek and Rio Grande Flood Control Plan, Truth or Consequences Area, Sierra County, Due: September 29, 1986, Contact: James White (505) 766-3577.

EIS No. 860309, Final FHW, OR, McLoughlin Boulevard and US 99E Widening, Pacific Highway East, Union-Grand Viaduct to South East River Road, Multinomah and Clackamas Counties, Due: September 15, 1986, Contact: Dale Wilken (503) 399-5749.

EIS No. 860310, Final, COE, TX, Guadalope River Navigation Improvement, Channel to Victoria, Calhoun and Victoria Counties, Due: September 15, 1986, Contact: Charles Harbaugh (409) 766-3044.

EIS No. 860311, FSuppl. FHW, IA, Relocated IA-58 and US 218 Improvement. Relocated US 20 to IA-3 Black Hawk and Bremer Counties, Due: September 15, 1986, Contact: H.A. Willard (515) 233-1664.

EIS No. 860312, Draft, CDB, CA, Casa Loma Specific Plan and Enterprise Zone Application, Designation and CDBG, Kern County, Due: September 29, 1986, Contact: Guy Greenlee (805) 861-2041.

EIS No. 860313, Draft AFS, CA, Shasta-Trinity National Forests, Land and Resource Management Plan, Due: September 29, 1986, Contact: Robert Tyrrell (916) 246-5222.

EIS No. 860314, Draft, FHW, CA, I-680/CA-24 Interchange Reconstruction and Freeway Improvements, Rudgear Road to Willow Pass Road, Contra Costa County, Due: October 10, 1986, Contact: David Eyres (916) 551-1314.

EIS No. 860315, Final, VAD, FL, Northern Palm Beach County Veterans Administration Medical Center, Construction, Palm Beach County, Due: September 15, 1986, Contact: Susan Livingstone (202) 389-3316.

EIS No. 860316, Draft, ERA, NH, MA, New England/Hydro-Quebec 450kV Transmission Line Interconnection Phase II, Construction and Operation, Due: September 29, 1986. Contact: Anthony Como (202) 252-5935.

EIS No. 860317, Draft, COE, CA, Coyote Creek Flood Control Project and Facilities Construction, Santa Clara County, Due: October 13, 1986, Contact: Richard Stradford (415) 974-0445.

EIS No. 860318, DSuppl, AFS, OR, WA, CA, Pacific Northwest Regional Guide, Northern Spotted Owl Habitat Management Standards and Guidelines, Updated and Additional Information, Due: November 17, 1986, Contact: Larry Fellows (503) 221-2387.

EIS No. 860319, Final, BIA, NM, Ojo 345kV Transmission Line Extension and Substation Construction, Rio Arriba and Santa Fe Counties, Due: September 15, 1986, Contact: William Allan (505) 766-3374.

EIS No. 860320, Draft, FRC, AR, OK, Lee Creek Hydroelectric and Water Supply Project, Construction and Operation, License, Due: September 29, 1986, Contact: Diane Rodman (202) 376-9045.

EIS No. 860321, Final, FHW, OR, Tualatin Valley Highway Widening, 21st Avenue to East Main Street, Washington County, Due: September 15, 1986, Contact: Dale Wilken (503) 399-5749.

Amended Notice

EIS No. 860177, Draft, AFS, CA, Lassen National Forest, Land and Resource Management Plan, Due: September 8, 1986, Published FR 5-09-86—Review period extended.

Dated: August 12, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-18491 Filed 8-14-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearings; Haughton Television et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant City, and State	File No.	MM Docket No.
A. Leo Jones d/b/a Haughton Television, Atlantic City, NJ.	BPCT-860220KG	86-322
B. ACTB, Inc., Atlantic City, NJ.	BPCT-860410KJ	
C. Surf City Broadcasting Associates, Atlantic City, NJ.	BPCT-860410KK	
D. Boardwalk Broadcast Associates, Inc., Atlantic City, NJ.	BPCT-860410KL	
E. Garden State Communications, Atlantic City, NJ.	BPCT-860410KM	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading Applicant(s)

Air Hazard, A, B, C, D, E
Minimum Separation, A, B, C, D, E
Main Studio, E
Comparative, A, B, C, D, E
Ultimate, A, B, C, D, E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The

complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–18414 Filed 8–14–86; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 86–188, File No. BP–850211AB and File No. BP–850430AN]

Hearing Designation Order; Radio Kerrville

Adopted: May 2, 1986.
Released: May 29, 1986.

By the Chief, Audio Services Division.

In re Applications of Radio Kerrville, Kerrville, Texas, Req: 1290 kHz, 0.5 kW, D, P&R Productions, Ltd., Kerrville, Texas, Req: 1290 kHz, 0.5 kW, D.

1. The Commission has under consideration the above-captioned mutually exclusive applications of Radio Kerrville and P&R Productions, Ltd.

2. Section V–A, Paragraph 8 of the application form (FCC Form 301) requires applicants to file a sufficient number of photographs to permit identification of all structures in the vicinity of the antenna site. The application filed by P&R Productions, Ltd. does not contain the required antenna site photographs; this applicant must, therefore, file the required photographs with the presiding Administrative Law Judge within 30 days of the release of this Order.

3. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

4. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

5. It is further ordered, that P&R Productions, Ltd. file the required antenna site photographs with the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

6. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, DC 20554

7. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

8. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communication Commission.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86–18415 Filed 8–14–86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Priscilla L. Schwier, et al.

1. The Commisson has before it the following mutually exclusive applications for a new TV station:

Applicant, City and State	File No.	MM Docket No.
A. Priscilla L. Schwier, Toledo, OH.	BPCT–860409KF	86–333
B. Wade Mitchell, Toledo, OH.	BPCT–860410KI	
C. Carmora Broadcasting, Inc., Toledo, OH.	BPCT–860410KS	
D. New Life Evangelistic Center, Inc., Toledo, OH.	BPCT–860410KT	
E. Dominion Broadcasting, Inc., Toledo, OH.	BPCT–860410KU	
F. Arthur Malendoski, Toledo, OH.	BPCT–860410KV	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading Applicant(s)

Air Hazard, A,B,C,D,E,F
Comparative, A,B,C,D,E,F
Ultimate, A,B,C,D,E,F

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–18416 Filed 8–14–86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; 62 Broadcasting, Inc., et al.;

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City and State	File No.	MM Docket No.
A. 62 Broadcasting, Inc., Killen, TX.	BPCT–860303KH	86–334
B. Excelsior Communications, Inc. Killeen, TX.	BPCT–860421KL	
C. Aida Barrera, Killeen, TX.	BPCT–860422KN	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

Air Hazard, A, B, C
Comparative, A, B, C
Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text

of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–18417 Filed 8–14–86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Survey of Ports and Marine Terminal Operators

The Federal Maritime Commission recently sent surveys to ports and marine terminal operators throughout the United States seeking their views as to the impact of the U.S. Shipping Act of 1984. The survey is being conducted as part of a five-year study mandated in section 18 of the 1984 Act. The Commission has been directed by the U.S. Congress to "collect and analyze information concerning the impact of this Act upon the international shipping industry," and to present its findings to an Advisory Commission on Conferences in Ocean Shipping, to be convened five and one-half years after enactment of the Act.

The Commission would like its survey to have the widest possible distribution. All interested port or marine terminal operators who have *not* received a copy of the survey are urged to contact: Robert Blair, Bureau of Economic Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, Tel. (202) 523–5870.

Dated: August 12, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86–18436 Filed 8–14–86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Community Bank System, 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 USC 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 indicated 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 September 5, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Community Bank System, Inc.*, Dewitt, New York; to engage *de novo* through its subsidiary Community Financial Services, Inc., Waterloo, New York, in the originating, acquiring or servicing of mortgage loans (including commitments to lend or sell the same) for company's account or for the accounts of others pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by September 2, 1986.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Community Financial Services, Inc.*, Bolivar, Tennessee; to engage directly in writing and processing all credit life insurance pursuant to § 225.25(b)(8) and (9) of the Board's Regulation Y. These activities will be conducted in Hardeman County, Tennessee, and surrounding counties.

Board of Governors of the Federal Reserve System, August 11, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–18429 Filed 8–14–86; 8:45 am]

BILLING CODE 6210-01-M

Hebron Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 5, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Hebron Bancshares, Inc.*, Hebron, Illinois; to become a bank holding company by acquiring 90 percent of the voting shares of Hebron State Bank, Hebron, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Kentucky National Corporation*, Louisville, Kentucky; to acquire 100 percent of the voting shares of Mutual Trust Bank, New Albany, Indiana.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Metropolitan Bancorporation, Inc.*, Bloomington, Minnesota; to merge with Continental Bancshares, Inc., Bloomington, Minnesota, and thereby indirectly acquire Metropolitan Bank St. Paul, St. Paul, Minnesota.

2. *Metropolitan Bancorporation, Inc.*, Bloomington, Minnesota; to acquire 89.22 percent of the voting shares of Metropolitan Bank Plymouth, Plymouth, Minnesota.

D. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Louise Bancshares, Inc.*, Louise, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of The First State Bank of Louise, Louise, Texas, and First City Bank of Wallis, Wallis, Texas.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Independence Holdings Limited*, Nassau, New Providence, Bahamas; IB Holdings N.V., Curacao, Netherlands, Antilles; and Independence Bancorporation, Encino, California; to become bank holding companies by acquiring Independence Bank, Encino, California.

2. *Maui Bancshares, Inc.*, Tacoma, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Maui, National Association, Kahului, Hawaii, Island of Maui.

Board of Governors of the Federal Reserve System, August 11, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-18430 Filed 8-14-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 8, 1986.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages)

National Institutes of Health

Subject: The Cancer Construction Program—Program Instructions—Reinstatement—(0925-0128)
Respondents: State or local governments
Subject: Cohort Study of Workers Exposed to Acrylonitrile (Smoking History Telephone Interview)—NEW
Respondents: Individuals or households

Center for Disease Control

Subject: Pulmonary Function Testing Course Approval Application—Extension—(0920-0138)
Respondents: State or local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations
Subject: Study of Greutzfeldt-Jakob Disease in Recipients of Human Growth Hormone (Concept Clearance)—NEW
Respondents: Individuals or households; Businesses or other for-profit; Non-profit institutions

National Institutes of Mental Health

Subject: Cost Outcome Research Methodology for the Chronically Mentally Ill—Extension—(0930-0116)
Respondents: State or local governments
OMB Desk Officer: Bruce Artim

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

Subject: Quarterly Report of Expenditures and Prior Quarter Expenditure Adjustments—Revision—(0960-0235)
Respondents: State or local governments
OMB Desk Officer: Fay S. Iudicello
Subject: Reconsideration Disability Report—Revision—(0960-0144)
Respondents: Individuals or households
OMB Desk Officer: Judy McIntosh

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of package)

Subject: Freestanding Federally-Funded Health Center Cost Report—Extension—(0938-0235) HCFA-242
Respondents: Businesses or other for-profit
Subject: Medicaid Information Collection in Alternative Sanctions for Long Term Care Facilities 42 CFR 442.118(b)—NEW—HCFA-R-93
Respondents: State or local governments
Subject: Information Collection Requirements in BOC-18-F, Claims Processing Assessment System—Extension—(0938-0431) HCFA-R-83
Respondents: State or local governments
OMB Desk Officer: Fay S. Iudicello

Office of the Secretary

(Call Reports Clearance Officer on 202-245-6511 for copies of package)

Subject: Follow-up to the 1983 Physician's Practice Costs and Income Survey—NEW—
Respondents: Businesses or other for-profit
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer).

Dated: August 11, 1986.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-18444 Filed 8-14-86; 8:45 am]

BILLING CODE 4150-04-M

Health Care Financing Administration

[BERC-373-PN]

Medicare Program; Lowest Charge Levels

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: In those cases in which, in the judgment of the Secretary, a specified medical service, supply, or piece of equipment generally does not vary significantly in quality from one supplier to another, the Medicare reasonable charge for the item or service may not exceed the lowest charge level (LCL) at which the item or service is widely and consistently available in a locality. We propose to add certain ambulance services and certain items of durable medical equipment, medical supplies, and prosthetic devices to the items and services already subject to the LCL criterion of reasonable charge reimbursement. Extending the listing of items and services reimbursed on the basis of LCL should result in more equitable reimbursement for essentially

similar items and services and should also result in savings to the Medicare program.

DATE: To be considered, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m. on September 15, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–373–PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–373–PN. Comments will be available for public inspection as they are received, beginning approximately one week after publication of this document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Roberta Epps, (301) 594–3867.

SUPPLEMENTARY INFORMATION:

Background

Section 1833 of the Social Security Act (the Act) provides for payment for physician and most other Part B medical and other health services on a reasonable charge basis. (Exceptions include hospital outpatient services, which are reimbursed on a reasonable cost basis, and diagnostic laboratory services, which are reimbursed under a fee schedule.) The criteria for determining reasonable charge payments are described in section 1842(b)(3) of the Act. Under section 1842(b)(3) of the Act, payment for a given item or service is generally based on the lowest of: (1) The actual charge, (2) the physician's or supplier's customary charge for the service, or (3) the prevailing charge in the locality for similar items or services. Section 1842(b)(3) of the Act further provides that in the case of medical services, supplies and equipment (including equipment servicing) that, in the Secretary's judgment, do not vary significantly in quality from one supplier to another, the reasonable charge may not exceed the lowest charge level (LCL) at which a particular service or supply is widely and consistently available in a locality.

Under 42 CFR 405.509 of the regulations, services (other than physician services), supplies and equipment reimbursed on a reasonable charge basis are subject to an additional limitation known as the inflation-indexed charge (IIC). The inflation-indexed charge means the lowest of the fee screens (prevailing charge, customary charge, the IIC itself, or LCL) that is in effect on September 30 of the preceding fee screen year as updated by the annual change in the Consumer Price Index for all Urban Consumers (CPI–U). While customary charge, prevailing charge and lowest charge level screens will continue to be updated annually, the current year's IIC may not exceed the prior year's IIC updated by the CPI–U (42 CFR 405.502(a)(4)). The following example explains the relationship between the IIC and the LCLs in the general determination of reasonable charges.

Example

The LCL limit for an item is $90 on September 30, 1987. The other reasonable charge screens (prevailing charge, customary charge and IIC) in effect at that time are greater than the LCL level. The CPI–U increase, as compiled for the 12-month period ending on March 31, 1987, is 5 percent. Therefore, while the IIC for fiscal year 1988 may not exceed $94.50 (90 X 1.05), the reasonable charge will depend on the updated customary charge, prevailing charge, and LCL for that year.

Our regulations at 42 CFR 405.511 implement the lowest charge level (LCL) provision. We define the LCL as the 25th percentile of the array of charges for a given item or service in the locality. For items and services furnished before October 1986, we calculate each LCL in January based on the array of charges for the July through September quarter of the previous calendar year and in July based on the array of charges for the January through March quarter of the same calendar year (42 CFR 405.511(c)(1)).

To implement section 2306(b) of the Deficit Reduction Act of 1984 (Pub. L. 98–369), which amended section 1842(b)(3) of the Act for services and items furnished on or after October 1, 1985, we planned to calculate customary and prevailing charges in October of each year. We brought the LCL update cycle into conformance with this change so that, for services and items furnished on or after October 1, 1986, we would calculate each LCL only once each year, in October, based on the array of charges for the preceding months of April through June (42 CFR 405.511(c)(2)).

In response, however, to section 9301(d) of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. L. 99–272), which further amended section 1842(b)(3) of the Act (for items and services furnished on or after October 1, 1986), we now plan to calculate customary and prevailing charges in January of each year. Accordingly, we now plan to calculate each LCL each January. (Regulation revisions implementing these changes are forthcoming.) Thus, the LCL for items and services furnished after September 30, 1986 and before January 1, 1987 will be the same as for items and services furnished before October 1, 1986.

Under our regulations at 42 CFR 405.511(b), we publish notice of a proposed determination to apply the LCL provision to a medical service, supply or piece of equipment, and we give the public an opportunity to comment. We rely on public comment to give us a valuable check on the validity and accuracy of our decision to include designated services and items among those subject to the LCL provision, and to assure that the proposed services and items do not vary significantly in quality. (See 43 FR 32294, 32297, July 26, 1978.)

At the present time, we apply the LCL provision to only two items of durable medical equipment: Standard wheelchairs and hospital beds. (Certain commonly performed laboratory services once were subject to the LCL provision too (42 FR 32335, July 26, 1978). However, as a result of section 2303 of Pub. L. 98–369, most laboratory services are now reimbursed in accordance with a fee schedule rather than on a reasonable charge basis.) The current list of services will remain in effect until we publish a final notice. We had proposed on March 26, 1979 (44 FR 18116) in a Notice of Proposed Rulemaking to expand the list to include additional items of durable medical equipment and laboratory services; however a final notice was not issued. As indicated above, as a result of subsequent legislation, laboratory services are now primarily reimbursed on the basis of a fee schedule. The durable medical equipment items included in that proposed notice are included in this proposed notice.

Proposal

As a result of improvements in medical technology, improved access to health services, and increased competition, Medicare beneficiaries are often offered an array of essentially similar items and services. It is not

reasonable that wide variations in Medicare payment should exist for virtually identical items. (See S. Rep. No. 1230, 92nd Cong., 2nd Sess. 193 (1972); H.R. Rep. No. 231, 92nd Cong., 1st Sess. (1971), *reprinted in* 1972 U.S. Code Cong. & Ad. News 5074.)

Congress clearly intended for the Secretary to use his authority to make items or services subject to the LCL provision when, after due consideration, it is determined that the items or services do not vary significantly in quality from one supplier to another. (Ibid.) We now propose to add additional items of durable medical equipment, prothestic devices, medical services, and ambulance services that would be subject to the LCL provision.

In accordance with Congressional intent (see S. Rep. No. 1230, *Supra*) and with the principle followed in publishing the initial list of items and services subject to the LCL, we have again given priority to items and services that are most frequently reimbursed under Medicare. The specific supplies and equipment identified for LCL purposes are those that account for the highest dollar volume of Medicare payment in the durable medical equipment, medical supply and prosthesis categories. We selected this listing based on our analysis of the Part B Medicare Annual Data procedure file for the 1983 calendar year from Medicare carriers. Certain items that do not account for a substantial dollar volume but are very similar to significant dollar volume items also have been included because failure to do so would invite use of similar lower dollar volume items to avoid the LCL limitation.

We note that the following studies and reports identified a number of items for which recommendations were made to apply the LCL methodology:

"Review of Cost Containment through Expansion of the Lowest Charge Level Limitation," (#1-02-005-19); Bureau of Quality Control, HCFA Region II; December 15, 1981.

"Evaluation of the Impact of the Lowest Charge Level (LCL) Provision (Regulation at 42 CFR 405.511, Reasonable Charges for Medical Services, Supplies and Equipment)," Division of Medical Services Reimbursement, Office of Reimbursement Policy, Bureau of Program Policy, HCFA; April 6, 1982.

"Extending the Lowest Charge Level to Additional Non-Physician Procedures Would Result in Substantial Savings to the Medicare Program," ACN: 01-32011; Office of the Inspector General, Department of Health and Human Services; July 18, 1983.

The items and services proposed in this notice for addition to the LCL list, with minor exceptions, include those identified in these studies and reports.

Because only essentially similar items or services have identical procedure codes, the new items and services to be subject to the LCL provision will be identified by procedure code. (As described below, we propose to use the HCFA Common Procedure Coding System (HCPCS) to describe items and services that would be subject to the LCL provision.) We have used procedure codes before for the purpose of identifying certain commonly performed laboratory services that were subject to the LCL provision (see 43 FR 32335, July 26, 1978.) We believe that procedure codes enable us to specify items and services in sufficient detail to ensure that items or services conforming to the codes will not vary significantly in quality.

Items and services paid for in large volume lend themselves most readily to standardized descriptions and specifications, and these services and items all have discrete procedure codes that have been in use for some time. Procedural terminology and coding systems are designed to provide a common language that accurately describes the LCL provision will be identified by procedure code. (As described below, we propose to use the HCFA Common Procedure Coding System (HCPCS) to describe items and services that would be subject to the LCL provision.) We have used procedure codes before for the purpose of identifying certain commonly performed laboratory services that were subject to the LCL provision (see 43 FR 32335, July 26, 1978.) We believe that procedure codes enable us to specify items and services in sufficient detail to ensure that items or kinds and levels of services and items provided and that can serve as a basis for coverage and payment determinations. Although the standardized descriptions were not developed to serve as quality measures, per se, we believe it is reasonable to presume that absent evidence to the contrary similar items and services capable of meeting identical nomenclature requirements do not vary significantly in quality. Typically, if an item lacks features necessary to serve the intended function of the item, it would not meet the nomenclature requirements of the coding system. Similarly, items with superfluous features or items that serve additional functions considered medically necessary by Medicare are assigned discrete procedure codes.

We invite commenters who believe that an item or service in the proposed list does vary significantly from supplier to supplier to specify, in detail, the nature of the variation in quality, including the identification of the specific products considered of lower quality and data showing the relative market share of these products. We also invite commenters to suggest refinements of the HCPCS that would delineate any quality variations described by the commenters.

In addition to any data relied on by the commenters to support significant variation in quality, we request commenters to supply pricing information about where in the array of data the prices fall, including information about whether the 25th percentile of customary charges is determined by products of lower quality. This pricing information will not be used in determining the significance of quality variations or in determining whether an item should be made subject to the LCL provision. Rather, this pricing data will enable us to evaluate the extent or magnitude of any problems in coding, coverage, and current customary and prevailing charge calculations.

There are two possible actions that we may take if significant variation in quality of items is found: (1) We may deny coverage if the lower quality item is not medically reasonable and necessary (i.e., it cannot meet the medical needs of the patient) and/or (2) we may divide the items into groups of standard and deluxe as defined by additional codes and nomenclature and establish separate levels for the items.

We are limiting the list of proposed services and items primarily to supplies, equipment and ambulance services. We are not proposing to extend the application of the LCL provision at this time to other widely prescribed services, such as physical therapy and chiropractic manipulation, because we do not have enough information to determine whether these services vary significantly in quality. We invite public comment on the possible inclusion of these and other services.

Also, although we are including ambulance services among the additional items and services proposed for LCL consideration, we note that there is an issue in calculating the LCLs for ambulance services due to the possible commingling of the charges of subsidized ambulance services with those of non-subsidized ambulance services. We are not aware of the existence of this situation in any locality. However, we invite comments on the treatment of such commingling if

it does exist in a locality. One option may be to exclude the charges from subsidized suppliers for the purpose of calculating an LCL.

List of Proposed Items and Services

We have used the codes and terminology in the HCFA Common Procedure Coding System (HCPCS) to describe the services and items listed below, which we propose to make subject to the LCL provision. We are using HCPCS since it is the standard coding system that has been adopted by all carriers. We propose that all of the components of the items and devices listed below be subject to the LCL criterion even if some of the components of an item are obtained separately by the beneficiary, or if some components are purchased while others are rented.

For sake of completeness, we are including in the list below the items of durable medical equipment that are already subject to the LCL provision. We have marked these with an asterisk (*).

A. Items of Durable Medical Equipment

1. Standard Wheelchair*, fixed full length arms, fixed or swing away detachable foot rests (E1130).

2. Wheelchair, detachable arms, desk or full length, swing away detachable foot rests (E1140).

3. Wheelchair, detachable arms (desk or full length), swing away detachable elevating leg rests (E1150).

4. Wheelchair, fixed full length arms, swing away detachable elevating leg rests (E1160).

5. Amputee wheelchair, fixed full length arms, swing away detachable elevating leg rests (E1170).

6. Amputee wheelchair, fixed full length arms, without foot rests or leg rests (E1171).

7. Amputee wheelchair, detachable arms (desk or full length), without foot rests or leg rests (E1172).

8. Amputee wheelchair, detachable arms (desk or full length), swing away detachable foot rests (E1180).

9. Amputee wheelchair, detachable arms (desk or full length), swing away detachable elevating leg rests (E1190).

10. Amputee wheelchair, fixed full length arms, swing away detachable foot rests (E1200).

11. Economy wheelchair, fixed full length arms, fixed foot rest (E1010).

12. Fully reclining wheelchair, fixed full length arms, swing away detachable elevating leg rests (E1050).

13. Fully reclining wheelchair, detachable arms, desk or full length, swing away detachable elevating leg rests (E1060).

14. Rollabout chair, without arms (E1030). (In lieu of medically necessary wheelchair (E1130).)

15. Rollabout chair, with fixed or removable arms (E1040). (In lieu of medically necessary wheelchair (E1130).)

16. Hospital Bed*, with side rails, fixed height with mattress (E0250).

17. Hospital Bed*, with side rails variable height, hi-lo, with mattress (E0255).

18. Hospital Bed, with side rails, semi-electric, head and foot adjustment, with mattress (E0260).

19. Hospital Bed, with side rails, total electric (head, foot and height adjustments, with mattress) (E0266).

20. Trapeze Bars, also known as patient helper, attached to bed, with grab bar (E0910).

21. Trapeze Bar, freestanding, complete with grab bar (E0940).

22. Walker, wheeled, without seat (E0141).

23. Walker, rigid (pick up), adjustable or fixed height (E0130).

24. Cane, quad or three prong, includes canes of all materials, adjustable or fixed, with tips (E0105).

25. Cane, includes canes of all materials, adjustable or fixed, with tip (E0100).

26. Sitz-type bath, portable, fits over commode seat (E0160).

27. Sitz-type bath, portable, fits over commode seat, with faucet attachments (E0161).

28. Sitz bath chair (E0162).

29. Commode chair, stationary, with fixed arms (E0163).

30. Commode chair, stationary, with detachable arms (E0165).

31. Pail or pan for use with commode chair (E0167).

32. Foot rest, for use with commode chair, each (E0175).

33. Decubitus care mattress, includes flotation or gel mattress (E0190).

34. Oxygen contents, gaseous, per cubic foot (E0400).

35. Oxygen contents, gaseous, per 100 cubic feet (E0405).

36. Oxygen contents, liquid, per pound (E0410).

37. Oxygen contents, liquid, per 100 pounds (E0415).

38. Stationary compressed gas system, includes use of container, regulator with flow gauge, humidifier/nebulizer, cannula or mask and tubing (E0425).

39. Oxygen system, gaseous, portable, includes portable container, supply container, regulator with flow gauge, humidifier, cannula or mask and tubing (E0430).

40. Oxygen system, liquid, stationary, includes use of reservoir, contents, indicator, flowmeter, humidifier, cannula or mask and tubing (E0440).

41. Oxygen system, liquid, portable, includes portable container, supply reservoir, flow, humidifier, cannula or masks, tubing and refill adaptor (E0435).

42. Oxygen concentrator, equivalent to 244 cubic feet (E1388).

43. Oxygen concentrator, equivalent to 488 cubic feet (E1389).

44. Oxygen concentrator, equivalent to 732 cubic feet (E1390).

45. Oxygen concentrator, equivalent to 976 cubic feet (E1391).

46. Oxygen concentrator, equivalent to 1220 cubic feet (E1392).

47. Oxygen concentrator, equivalent to 1464 cubic feet (E1393).

48. Oxygen concentrator, equivalent to 1708 cubic feet (E1394).

49. Oxygen concentrator, equivalent to 1952 cubic feet (E1395).

50. Oxygen concentrator, equivalent to over 1952 cubic feet (E1396).

51. Humidifier, durable for extensive supplemental humidification during IPPB treatments or oxygen delivery, e.g., cascade (E0550).

52. Humidifier, durable for supplemental humidification during IPPB treatment or oxygen delivery, e.g., cascade jr. (E0560).

53. Humidifier, durable glass or autoclavable plastic bottle (E0555).

54. Compressor, air power source for equipment which is not self-contained or cylinder driven (E0565).

55. Nebulizer, with compressor; e.g., Devilbiss pulmo-aid (E0570).

56. Nebulizer, durable, glass or autoclavable plastic, bottle type, for use with regulator or flowmeter (E0580).

57. Nebulizer, self-contained, ultrasonic (E0575).

58. Tens, two lead, localized stimulation (E0720).

59. Tens, four lead, larger area/multiple nerve stimulation (E0730).

60. Suction pump, home model, portable (E0600).

61. Seat lift chair, motorized to assist patient in standing and sitting (E0620).

62. Patient lift, hydraulic, with seat or sling (E0630).

63. Mattress, innerspring (E0271).

64. Mattress, foam rubber (E0272).

65. Bedside rails, half length (E0305).

66. Bedside rails, full length (E0310).

67. IPPB machines with automatic valves, external power source, includes cylinder regulator, built-in nebulization (E0510).

68. IPPB machines with automatic valves, electrically driven with internal compressor, built-in nebulization (E0515).

69. IPPB machines with manual valves, external power source, includes

cylinder regulator, built-in nebulization (E0500).

70. IPPB machines with manual valves, electrically driven with internal power source, built-in nebulization (E0505).

71. Pressure pad, alternating with pump (E0180).

72. Pressure pad, alternating with pump, heavy duty (E0181).

B. Medical Supplies

1. Indwelling catheter, Foley type, two-way, teflon (A4341).

2. Indwelling catheter, Foley type, two-way, latex (A4342).

3. Indwelling catheter, Foley type, two-way, latex with teflon coating (A4343).

4. Indwelling catheter, Foley type, two-way, all silicone (A4344).

5. Indwelling catheter, Foley type, two-way, silicone with customer coating (A4345).

6. Indwelling catheter, Foley type, three-way, latex or teflon for continuous irrigation (A4346).

7. Catheter insertion tray, includes catheter and drainage bag (A4353).

8. Urinary collection and retention system, drainage bag with tube (A4348).

9. Urinary collection and retention system, leg bag with tube (A4349).

10. Colostomy set (A4360).

11. Ureterostomy set (A4430).

12. Surgical trays (A4550).

13. Catheter insertion tray, without tube and drainage bag (A4354).

14. Ideal bladder set (A4390).

15. Irrigation set for irrigation of ostomy (A4400).

C. Prosthetic Devices

1. Breast prosthesis, mastectomy bra (L8000).

2. Breast prosthesis, mastectomy form (L8020).

3. Stump sock, single ply, fitting, above knee, each (L8480).

4. Cervical, semi-rigid, adjustable (plastic collar) (L0140).

D. Ambulance Services

1. Ambulance service, Basic Life Support (BLS) base rate, emergency transport, one-way (A0010).

2. Ambulance service, BLS, per mile, transport, one-way (A0020).

3. Ambulance service, conventional air service, transport, one-way (A0030).

4. Ambulance service, air, helicopter service, transport (A0040).

5. Ambulance service, waiting time, one-half (½) hour increments (A0060).

6. Ambulance service, oxygen, administration and supplies, life sustaining situation (A0070).

7. Ambulance service, Advanced Life Support (ALS), base rate, all inclusive services, emergency transport, one-way (A0220).

8. Ambulance service, ALS, per mile, transport, one-way (A0221).

9. Ambulance service, ALS, base rate, where nonreusable ALS supplies are billed separately, emergency transport, one-way (A0223).

E. Additional Items of Durable Medical Equipment To Be Subject to the LCL Provision

We propose that the items and devices listed below be subject to the LCL criterion even though these items are normally considered either convenience or deluxe items or items with convenience or deluxe features. Convenience or deluxe items or features are not generally covered by the Medicare program. However, under certain circumstances, due to the special medical needs of the beneficiary, these items may be fully covered and reimbursed. In such circumstances, the LCL applicable to these items would be used in determining the reasonable charge for the items.

Where convenience or deluxe items or features are not medically necessary, reimbursement is limited to the reasonable charge for the comparable, covered, medically necessary item. In such circumstances, the LCL applicable to the comparable, covered, medically necessary item would be used in determining the reasonable charge for the item.

For sake of completeness and accuracy, we are including in the list below the HCPCS codes for convenience or deluxe items and for items with convenience or deluxe features, along with the HCPCS codes of the comparable medically standard items.

1. Lightweight wheelchair, detachable arms (desk or full length), swing away detachable foot rests (E1240). (Comparable to E1140).

2. Lightweight wheelchair, fixed full length arms, swing away detachable foot rests (E1250). (Comparable to E1150).

3. Lightweight wheelchair, detachable arms (desk or full length), swing away detachable foot rests (E1260). (Comparable to E1140).

4. Lightweight wheelchair, fixed full length arms, swing away detachable elevating leg rests (E1270). (Comparable to E1150).

5. Rigid walker, wheeled, with seat (E0142). (Comparable to E0141).

6. Folding walker, wheeled, without seat (E0143). (Comparable to E0141).

7. Walker, wheeled, with seat and crutch attachment (E0145). (Comparable to E0141).

8. Walker, wheeled, with seat (E0146). (Comparable to E1041).

9. Walker, folding (pick up), adjustable or fixed height (E0135). (Comparable to E0141).

10. Commode chair, mobile, with fixed arms (E0164). (Comparable to E0163).

11. Commode chair, mobile, with detachable arms (E0166). (Comparable to E0165).

Regulatory Impact Analysis

A. Introduction

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is one that would result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we prepare and publish a regulatory flexibility analysis consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. We consider all manufacturers and suppliers of durable medical equipment, medical supplies, prosthetic devices, and suppliers of ambulance services to be small entities for purposes of the RFA.

We estimate that applying the lowest charge level provision to these additional types of durable medical equipment, medical supplies, prosthetic devices, and ambulance services would reduce payments for these items and services by $100 million annually by FY 1990. Since the impact of this proposed notice would exceed the $120 million threshold, it is a major rule under E.O. 12291 and an initial regulatory impact analysis is required. Furthermore, since this proposed rule could have a significant economic impact on some small entities, we have prepared a combined regulatory flexibility analysis and regulatory impact analysis.

B. Effect on Program Expenditures

We estimate that the following program savings would result from this proposal:

	Savings
Fiscal year:	
1987	[1] $60,000,000

	Savings
1988	90,000,000
1989	110,000,000
1990	120,000,000
1991	140,000,000

[1] Estimates are rounded to the nearest $10 million and are based on an assumed effective date of Jan. 1, 1987.

These savings would result from the impact of this proposed notice on thousands of small entities. Therefore, we do not expect the impact on any one entity to be great.

We estimate that the following small entities would be affected:

—55,000–60,000 drugstores
—Fewer than 10,000 DME suppliers
—Approximately 5,000 ambulance companies

We have no information on health industry manufacturers and no information on the small entities total revenue. We welcome any submissions of data, cost or price information that would aid us in further assessing the impact of the proposals.

C. Affected Entities

We expect manufacturers and suppliers of durable medical equipment, medical supplies, and prosthetic devices, suppliers of ambulance services, and beneficiaries to be affected by this regulation. We do not have sufficient data to predict exactly the nature of the impact of this proposed notice or the magnitude of such impact. Below, we discuss likely outcomes.

1. Suppliers

Suppliers (and manufacturers that sell directly) would review reasonable charges in the locality to determine what strategy would achieve the best profit. In response to the proposed notice, we expect them to assess wholesale prices of products of current and future stocks and costs of maintaining these stocks; to compare these costs to the prevailing charge level and the lowest charge level in the localities in which they operate; to assess the population in terms of ability to pay; to consider whether or not to accept assignment; and to decide whether or not they can stock the equipment and supplies at lower prices from other manufacturers.

Decisions resultant from the above-described assessments would vary from locality to locality and from supplier to supplier. For example, suppliers whose charges exceed the LCL might be expected to shift their stock to lower-priced items, to otherwise seek to make their operations more efficient or to change their policies regarding acceptance of assignment. In general, in a given area, the more widely divergent the prices, the greater the effect of the proposed notice on suppliers. When the lowest charge level on a distribution curve is not far from the 75th percentile of customary charges, there should be little effect.

2. Manufacturers and Distributors

Decisions made by the suppliers in response to this proposed notice could likely affect the manufacturers and wholesale distributors. The impact on an individual manufacturer may vary depending upon the manufacturer's degree of diversification of products, variations in reasonable charge levels and demand from locality to locality, variations based on Medicare's portion of the market, optimization of profitability margins, and other considerations.

3. Ambulance Service Suppliers

Ambulance service suppliers are generally of three types: Nonprofit, for-profit and those that offer services subsidized or directly supplied by the local governments. A given locality may have many or few ambulance service suppliers.

The effect of the proposed notice on these entities would vary from locality to locality, depending upon factors such as the extent of local competition and the nature of the organization furnishing the ambulance services. Ambulance service suppliers whose charges exceed the LCL may respond by seeking to become more efficient or by seeking additional revenue (from the beneficiary, third party insurance held by the beneficiary or from the local government), or both.

4. Beneficiaries

The effect of the proposed notice on an individual beneficiary would depend on whether there is a significant local change in the assignment rate; whether or not a beneficiary participates in both Medicare and Medicaid; and whether he or she has private insurance or is enrolled in a risk-contract HMO or CMP. If the assignment rate were to remain the same or rise, beneficiaries may expect lower coinsurance, since reasonable charges would be lower. However, if the assignment rate goes down, beneficiaries may have increased out-of-pocket expenses. If the beneficiary is a Medicaid recipient, any beneficiary payment would be limited to a nominal copayment. If the beneficiary has private insurance, the impact would possibly be affected by the coverage offered. If a beneficiary is enrolled in an HMO or CMP, payment for ambulance services would be unaffected.

D. Alternatives

There are three alternatives we have considered in the course of preparing this proposed notice. (1) We could continue to apply the LCL provision to only two items of DME. We would expect that prices would continue to rise on items and services not currently subject to the LCL. (2) We could have proposed to include in the list more items and services than those actually proposed here. This probably would further add to program savings; however, we would have to include items and services about which we do not have enough data to determine whether they may vary significantly in quality. (3) We could issue a proposed notice, as we are doing, that contains a comprehensive list of DME, medical supplies and ambulance services that, as best as we can determine, satisfy the requirements for application of the LCL provisions. Although we expect considerable public comment regarding this notice, we have determined for the above-described reasons that the third alternative is the most preferable.

E. Conclusion

E.O. 12291 requires us to assess the benefits, costs, and net benefits of all rules, major or otherwise. For major rules, we must discuss those costs and benefits in an impact analysis, and explain why the potential benefits outweigh the potential costs to society.

For the most part, the costs and disadvantages that could result from this proposal would take the form of reduced payment to certain small entities and, possibly, if the assignment rate is reduced, more initial out-of-pocket expenses for the beneficiary.

The primary benefit expected to result from this proposed rule is the anticipated reduction in the cost to the Medicare program of DME equipment and of medical supplies. As a result, additional Trust Fund monies would be available for quality health care for Medicare beneficiaries. To the extent that suppliers continue to accept assignment, the beneficiary liability would be reduced.

The application of the LCL provision to more items and services is expected to produce substantial benefits in the form of economy and efficiency, to eliminate wide variations in Medicare payment for virtually identical items and services, and to limit upward pricing trends of the health care marketplace as a whole. We believe that the overall benefits to society more than offset any resulting liabilities.

Paperwork Reduction Act

The inclusion of new items and services in the list of items and services subject to the LCL provision does not impose paperwork collection requirements. Consequently, this notice need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3801 et seq.)

Response to Comments

Because of the large number of comments we receive on proposed notices, we cannot acknowledge or respond to them individually. However, in preparing a final notice, we will consider all comments received timely and respond to the major issues raised concerning the proposed notice.

(Sections 1102, 1833, 1842(b)(3) and 1871 of the Social Security Act; 42 U.S.C. 1302, 13951, 1395u(b)(3) and 1395hh; 42 CFR 405.502 and 405.511)

(Catalog of Federal Domestic Assistance Program No. 13.774 Medicare-Supplementary Medical Insurance)

Dated: July 25, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: August 6, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-18460 Filed 8-14-86; 8:45 am]

BILLING CODE 4120-01-M

[BERC-383-PN]

Medicare Program; Reasonable Charge Payment Limits for Anesthesia Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: In this notice, we propose to establish special reasonable charge payment limits for anesthesia services furnished by physicians during cataract surgery and iridectomies. This proposal is intended to prevent excessive payment for these services. In addition, in order to discourage physicians from supervising more than a maximum acceptable number of procedures, we would reduce the amount of payment made in those cases in which an anesthesiologist directs more than four concurrent anesthesia procedures.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m., on September 15, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-383-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-383-PN. Comments received timely will be available for public inspection as they are received, which is generally about three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Stanley Weintraub, (301) 597-5345.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1842(b)(3) of the Social Security Act requires that all payments under Part B of the Medicare program (Supplementary Medical Insurance) must be reasonable. Reasonable charge determinations under Part B are generally based on customary and prevailing charges derived from historic charge data. The reasonable charge for a service is generally set at the lowest of the following three factors:

- The actual charge.
- The customary charge for similar services generally made by a physician or supplier furnishing the service.
- The prevailing charge in the locality for similar services. (The prevailing charge may not exceed the 75th percentile of the customary charges of physicians and suppliers in the locality.)

An economic index limits the annual increases in prevailing charges for physician services. The Medicare economic index measures changes that occur in general earnings levels of workers that are attributable to factors other than increases in their productivity and in expenses of the kind incurred by physicians in office practice.

This standard method of determining the reasonable charge for a service can, in some instances, result in payments that we believe may not be reasonable. This may occur, for example, when the marketplace is not competitive because of limited suppliers, when the Medicare program is the primary source of payment for a service, or when there has been a change in technology, increased facility with that technology, or changes in acquisition or supplier costs.

In order to ensure that Medicare payments are reasonable, we published a final rule with comment period on August 11, 1986 in the **Federal Register** (51 FR 28710) that amended 42 CFR 405.502 to set forth factors to be considered and procedures to be followed in establishing special reasonable charge limits. The rule specifies that we may set a limit if we determine that the standard rules for calculating reasonable charges result in grossly deficient or excessive charges. The limits would be in the form of either a specific dollar amount or a special method to be used in determining maximum reasonable charges to be allowed for a particular service or category of service.

More specifically, § 405.502(g)(1)(i) provides the following examples of circumstances that may result in excessive charges:

- The marketplace is not competitive.
- Medicare is the primary source for payment.
- The charges involve the use of new technology for which an extensive charge history does not exist.
- The charges do not reflect changing technology, increased facility with that technology, or changes in acquisition or supplier costs.
- Prevailing charges in a locality are grossly in excess of prevailing charges in other localities.
- Charges are grossly in excess of acquisition or production costs.

The regulations specify, at § 405.502(g)(3), that we will propose any limit in a notice to be published in the **Federal Register** and provide an opportunity for comment. When all comments have been fully considered, we will publish in the **Federal Register** our final determination and our response to the comments. Section 405.502(g)(4) provides that the proposed and final notices will also set forth the criteria and circumstances, if any, under which a specific exceptions process to the special limit would be established.

Under the procedures described in § 405.502(g), we are proposing to establish limits on the amount of payment we make for certain physician anesthesia services, based on the fact that current charges do not reflect changing technology.

II. Payment for Anesthesia Services

Under our current regulations (§§ 405.552 and 405.553), anesthesiology services personally furnished by a

physician are reimbursed on a reasonable charge basis. In addition, a physician may also be reimbursed on a reasonable charge basis for the personal medical direction that he or she furnishes to a qualified anesthetist (for example, a certified registered nurse anesthetist (CRNA)).

As a condition of receiving reasonable charge payment, the physician may not direct more than four concurrent anesthesia procedures at a time, must be physically present in the operating suite, and may not perform any other services during the same period of time. In addition to these requirements and prohibitions, the physician is required to perform several personal services to the patient before, during, and after the procedure such as examining the patient and personally participating in the most demanding parts of the procedure. If a physician does not fulfill these requirements or directs more than four procedures at one time, the concurrent anesthesia services are considered physician services furnished to the provider and, thus, are not reimbursed as physician services on a reasonable charge basis.

Carriers calculate the reasonable charge for anesthesia services based on the following:

- Base value units assigned to the specific procedure performed that represent the value of all anesthesia services except the value of the actual time spent administering the anesthesia.
- Time units that represent the elapsed period of time from when the anesthesiologist prepares the patient for induction and ending when the anesthesiologist is no longer in personal attendance to the patient. The carrier allows no more than one time unit for each 15 minute interval.
- The carrier may also use modifier units that take into account special factors such as the age or physical condition of the patient.

The sum of these units is multiplied by the lesser of the individual physician's customary charge conversion factor or the prevailing charge conversion factor and compared with the billed charge to arrive at the reasonable charge for the physician's anesthesia service. The individual physician's customary charge conversion factor is derived from the physician's billed charges and underlying base, time, and, if appropriate, modifier units. The prevailing charge conversion factor is computed by arraying the anesthesia customary charge conversion factors in ascending order and weighting each by the frequency of services on which it was based. An actual amount in the array that is high enough to include the customary charge conversion factors of the anesthesiologists who perform at least 75 percent of the cumulative services determines the prevailing charge conversion factor.

Anesthesia services may be personally performed by the anesthesiologist or the anesthesiologist may medically direct concurrent anesthesia services in which the anesthesia is administered by an anesthetist. The amount of reasonable charge reimbursement differs depending on whether the anesthetist is or is not the employee of the anesthesiologist.

The reasonable charge for a physician's medical direction of no more than four concurrent services is determined on the same basis as that of the physician's personal services to a patient; that is, procedure-specific relative value base units plus time units. However, under § 405.553(c), if the anesthetist is not employed by the anesthesiologist, the carrier allows no more than one time unit for each 30 minute interval rather than one unit for each 15 minutes.

In cases in which a physician directs more than four concurrent procedures, all the reasonable and necessary preanesthesia services personally furnished by the physician up to and including induction of the patient qualify for reasonable charge reimbursement. Those services furnished subsequent to induction of the patient are considered physician services to the provider and are payable to the provider on a prospective payment basis if the services are furnished to an inpatient of a hospital that is subject to the prospective payment system or on a reasonable cost basis. Section 8312.1G of the Medicare Carriers Manual (HCFA Pub. 14–3) further specifies that payment for these pre-anesthesia services is based on relative value base units plus one time unit for induction if the induction was personally performed by the physician. No further time units are recognized for any of the concurrent procedures.

III. Provisions of This Proposed Notice

A. Anesthesia Services Related to Cataract Surgery

In processing anesthesia claims, carriers have the authority to use an appropriate relative value guide. The principal relative value guides currently used by the carriers include the 1964 and the 1969 California Relative Value Studies (CRVS) and various versions of the American Society of Anesthesiologist's (ASA) Relative Value Guide. Some carriers use a combination of these guides or other guides, such as a State Relative Value Guide, to establish relative value units. The most commonly used relative value studies are the 1964 and the 1969 CRVS and the 1970 ASA Guide.

Anesthesia claims are processed using the HCFA common procedure coding system (HCPCS) surgical procedure code with an appropriate modifier for anesthesia services. The HCPCS surgical codes are based on the Current Procedural Terminology, Fourth Edition (CPT–4), which identifies codes and descriptors for services furnished, including physician services. The 1985 version of CPT–4 includes 12 procedure codes to describe cataract surgery. However, the CRVS and ASA Guides commonly used by the carrier to process claims do not contain the same number of codes.

Generally, carriers are assigning a relative value of eight base units to the anesthesia services associated with cataract surgery procedures.

Cataract surgery is ordinarily performed under a nerve block, such as a retrobulbar block, that is administered by an ophthalmologist. Before the administration of the block and during the surgical procedure, an anesthesiologist or other qualified individual (for example, a CRNA) who is under an anesthesiologist's medical direction usually administers a drug or combination of drugs intravenously to sedate the patient. In addition, the anesthesiologist or other qualified individual monitors the patient's condition during the surgical procedure.

Historically, cataract surgery was performed on an inpatient basis with the patient placed under general anesthesia and it involved an inpatient hospital stay of three to six days. This surgery is now frequently performed in ambulatory surgical centers (ASCs) and, in some cases, in physicians' offices. A number of factors have contributed to this trend. A major influence is the policy of the Utilization Quality Control Peer Review Organizations that requires prior authorization for hospital stays associated with cataract surgery. Other factors contributing to this movement include the reduced risk associated with the surgical procedure, technological advances in the procedure, and the implementation of the Medicare inpatient hospital prospective payment system.

While a patient with severe coronary or pulmonary disease or other life threatening condition may need inpatient hospitalization, ophthalmologists agree that most cataract surgery can be safely performed in the outpatient department

of a hospital or in an ASC. In fact, we estimate that at least 90 percent of all cataract surgery is now performed on an outpatient basis, either in a hospital outpatient department, an ASC, or a physician's office.

It should be noted that cataract surgery is the most common and rapidly growing surgical procedure covered by Medicare. The total number of cataract operations increased from 415,000 in 1980 to 1.1 million in 1985 [1], an increase of 165 percent. The procedure is primarily performed on the elderly and Medicare pays for about 80 percent of all cataract operations. Medicare payments under Part B for cataract surgery, including payments to anesthesiologists and surgeons, were over $1 billion in 1985.

B. Factors Considered in Establishing the Limits

The Office of the Inspector General (OIG) conducted a study entitled "Medicare Reimbursement for Anesthesia Services" (OAI–85–2–010) to clarify the nature and prevalence of local/standby anesthesia services (also known as monitored anesthesia services) and to examine and evaluate related Medicare reimbursement policies and practices. (Copies of this study can be obtained from the Office of Public Affairs, OIG, 330 Independence Avenue, SW., Washington, DC 20201.) OIG reviewed the type of anesthesia services furnished to Medicare patients during cataract extractions, pacemaker implants, and inguinal hernia repairs.

The study found that local anesthesia administered by a surgeon with the patient monitored and evaluated by an anesthesiologist (that is, monitored anesthesia) is furnished more frequently for cataract extractions and pacemaker implants than general anesthesia. General anesthesia was more prevalent for inguinal hernia repairs.

OIG reported that monitored anesthesia usually does not require the anesthesiologist to perform the full range of services associated with general anesthesia. In contrast with general anesthesia, the anesthesiologist providing monitored anesthesia care does not administer the local anesthetic, intubate or extubate the patient, support respiratory function mechanically, emerge the patient from the unconscious anesthetic state, or routinely perform postoperative visits, especially after outpatient surgery.

[1] "Medicare Reimbursement for Cataract Surgery Hearing Before the Subcomm. on Health of the House Comm. on Ways and Means", 99th Cong., 1st Sess. 29 (1985).

OIG identified eight Medicare carriers who recognize monitored anesthesia as consisting of less than the full range of anesthesia service and, therefore, reimburse less for monitored anesthesia than for general anesthesia. Six of the eight carriers reimburse monitored anesthesia based upon time units only and two carriers allow time units plus three additional base units for monitored anesthesia regardless of the type of surgical procedure or the relative value base units associated with the procedure. The carriers have adopted this policy under the authority of § 405.502(a)(7) (inherent reasonableness).

OIG recommended that payment for monitored anesthesia should be based on time units only or time units plus up to three relative value base units. In addition, OIG recommended that this policy be applied to all surgical procedures involving monitored anesthesia, not just the three surgical procedures that were the focus of their study.

We considered adopting OIG's recommendations, which would have required all Medicare carriers to recognize a lesser level of reimbursement for monitored anesthesia associated with surgical procedures than for general anesthesia services associated with surgical procedures. However, we decided not to adopt this broad-based policy at this time. There are problems associated with defining monitored anesthesia services. For example, since general anesthesia can be furnished intravenously, limiting the term general anesthesia only to anesthesia administered through inhalation would be inappropriate. Moreover, some of the most difficult surgical cases can involve the use of intravenous agents monitored by the anesthesiologist. Finally, we do not want to formulate a policy that would provide an inappropriate incentive for physicians to use one form of anesthesia over another. Thus, for the present, we have decided not to propose any change in our overall policy regarding reimbursement for monitored anesthesia and to study this issue further.

We analyzed the number of base units typically assigned to the anesthesia service connected to the various surgical procedures approved for coverage when performed in an ASC. These covered procedures were listed in a notice published in the **Federal Register** (47 FR 34094) on August 5, 1982 and were subsequently incorporated into the Medicare Carriers Manual. The covered procedures are described by body system and by ASC facility payment groups.

This list currently includes approximately 100 surgical procedures that are described under almost 450 HCPCS codes. Excluding surgical procedures related to the eye, the anesthesia services furnished during the great majority of procedures are assigned a base value of three units. Within the category of eye surgery, the great majority of eye surgical procedures are assigned a base value of four units. In fact, only cataract surgeries and iridectomies have higher base unit values. Cataract surgery, as noted above, has a base surgical value of eight units. Relative value studies show that this relatively high value level originated during the period of time that the procedure was done on an inpatient basis involving very different surgical techniques and the use of general anesthesia rather than local anesthesia.

If we assume that the range of anesthesia base units for surgery other than certain eye surgical procedures reflects the relative complexity of anesthesia services across surgical procedures usually performed in ASCs, then there is an indication that the number of anesthesia base units assigned to cataract surgery is overstated. We have discussed this issue with representatives of the American Society of Anesthesiologists (ASA), and they agree with us that there is validity to the general proposition that the anesthesia base units assigned to cataract surgery are overstated relative to other ambulatory procedures. However, ASA does not support the level of reduction we are proposing.

We are proposing to allow no more than four base units as well as appropriate time units and, if appropriate, modifier units for anesthesia services connected to cataract surgery. As indicated, almost all cataract surgery is being performed on an ambulatory basis. General anesthesia is not ordinarily used. Most surgery is done under local anesthesia administered by the ophthalmologist while the anesthesiologist is responsible for monitoring the patient's condition, including monitoring any intravenous agent furnished to supplement the local anesthetic.

In addition, we are proposing to allow no more than four base units as well as appropriate time and modifier units for anesthesia services connected to iridectomies. This procedure is no more complex than cataract surgery. Therefore, it would be inconsistent, from the standpoint of relative values, to continue to recognize a greater number

of base units for iridectomies than for cataract surgery.

Under any of the various commonly used relative value guides, the least number of anesthesia base units assigned to most surgical procedures performed on an ambulatory basis is three units. We would allow an additional unit for cataract procedures and iridectomies on the premise that the service is complicated by the location of the surgery, which restricts access to the patient's airway and requires surgical field avoidance.

This is consistent with the accepted use of modifier units under relative value unit guides. Under the 1969 California Relative Value Guide, modifier units range from one to ten units. One additional unit is allowed for anesthesia procedures with a base value of three units that become complicated by requiring surgical field avoidance. Our proposal follows this approach.

The Medicare carriers would continue to have the authority under § 405.502(a)(7) to initiate or continue policies that recognize fewer than four base units for anesthesia services associated with cataract surgery or iridectomies, if those policies are based on facts beyond those relied on in this proposal.

C. Exceptions Process

As we mentioned earlier, the provisions of the regulations under which these limits on reasonable charges are being issued (§ 405.502(g)) state that the proposed notice would set forth the criteria and circumstances under which a carrier may grant an exception to the limits. While we are not proposing to establish any special exceptions policy in this notice, carriers do have the authority under § 405.506 to reimburse additional amounts if there are unusual circumstances or medical complications requiring additional time, effort, or expense that support an additional charge, and it is acceptable medical practice in the locality to make an extra charge in these cases.

D. Supervision of More Than Four Concurrent Anesthesia Procedures

If a physician directs no more than four concurrent anesthesia services, the reasonable charge is determined as follows:

- Under § 405.553(b), if the anesthetist is employed by the physician, the physician's reasonable charge is determined on the basis of base units plus one time unit for each 15 minute interval.
- Under § 405.553(c), if the anesthetist is not employed by the physician, the physician's reasonable charge is determined on the basis of base units plus one time unit for each 30 minute interval.

If a physician directs more than four concurrent procedures, the reasonable charge for services up to and including induction is based on the base units plus one time unit for induction if the induction was personally performed by the physician. However, no additional time units are allowed. Reimbursement of physicians supervising more than four concurrent procedures is treated differently because in these cases the physician is acting in an administrative capacity rather than engaging in medical direction. In the case of physicians practicing in providers, § 405.552(b) explicitly recognizes these services as services to the provider, and in the case of ASCs, these services are implicitly covered by the payment to the facility.

As mentioned above, the anesthesia base unit assigned to the specific anesthesia procedure performed represents the value of all anesthesia services except the value of the actual time spent administering the anesthesia. Anesthesia time starts when the anesthesiologist begins to prepare the patient for the induction of anesthesia in the operating room and ends when the anesthesiologist is no longer in personal attendance to the patient. The activities involved in the base unit would, by their nature, include the pre-anesthestic examination, prescription of the anesthesia plan, the provision of indicated postanesthesia care, the administration of fluids or blood incident to the anesthesia or surgery, as well as other unspecified functions that may vary with the complexity of the surgical procedure and occur during the anesthesia administration time.

Anesthesia base unit values range, for example, from a low of three base units for uncomplicated surgical procedures to a value of 15 units for certain complex cardiovascular procedures. We believe that the significant difference in base unit values for anesthesia services across certain surgical procedures is related not just to the pre-anesthesia and postanesthesia services included in the base unit value but also the other anesthesia activities that the anesthesiologist may be called upon to perform during the surgical procedure itself.

If the anesthesiologist medically supervises more than four concurrent procedures, the anesthesiologist is not furnishing a level of medical involvement that justifies the payment of time units nor is he or she available to perform the full scope of activities during the anesthesia administration interval that are encompassed by the base unit value. In these situations, it would be reasonable to structure a reasonable charge payment only for the anesthesiologist's pre-anesthesia and postanesthesia services. It would not be reasonable to recognize the full number of base units otherwise assigned to the procedure because of the anesthesiologist's limited involvement in each concurrent procedure.

Therefore, we are proposing to allow no more than three base units for each procedure in those cases in which the anesthesiologist is performing more than four concurrent procedures. Three is the least number of base units assigned to anesthesia procedures under the ASA Guide. We believe that the recognition of three base units would provide an adequate level of reimbursement for the anesthesiologist's services and, at the same time, recognize the anesthesiologist's involvement in each concurrent procedure.

IV. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed notices that are likely to meet criteria for a "major rule". A major rule is one that would result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographical regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We also prepare and publish an initial regulatory flexibility analysis, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), for proposed notices unless the Secretary certifies that the notice would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider all anesthesiologists to be small entities.

We estimate that, as a result of reducing payments to anesthesiologists for anesthesia services provided to patients undergoing cataract surgery, the Medicare program would eventually realize annual savings of $100 million or more. While the available data do not permit us to determine which anesthesiologists would be most affected by this notice, according to *Physician Characteristics and Distribution in the U.S., 1984 Edition,*

published by the American Medical Association, there were 18,495 non-Federally employed anesthesiologists furnishing services to patients as of December 31, 1983. We believe that most, if not all, anesthesiologists provide services in connection with cataract surgery. Many anesthesiologists, therefore, could be affected by this proposed notice. We are, therefore, providing an analysis that meets RFA criteria as well as E.O. 12991.

B. Savings

We have not been able to estimate the savings that would result from allowing no more than three base units when the anesthesiologist is involved in more than four concurrent procedures. We do not believe they would be substantial. However, we estimate that the proposal to reduce the number of base units from eight to four for physician anesthesia services provided when local anesthesia is employed for performing cataract procedures would result in the following annual savings for the next five Federal fiscal years (FYs) assuming an effective date of January 1, 1987:

SAVINGS ESTIMATES[1]

[In millions]

Fiscal year—				
1987	1988	1989	1990	1991
$45	$75	$85	$95	$105

[1] Rounded to the nearest $5 million.

These savings estimates are based, in part, on data presented in "Update of Intraocular Lenses Implanted in the United States" by Walter J. Stark, M.D., et al. (*American Journal of Ophthalmology*, Vol. 98, No. 2, Aug. 15, 1984, pp. 238–239) and the report of the Select Committee on Aging, *Cataract Surgery: Fraud, Waste, and Abuse* (Comm. Pub. 99–506). On the basis of these data, we expect that in FY 1987 a total of 1.4 million cataract removal procedures (with and without intraocular lens implants) will be performed in the United States. We anticipate that approximately 80 percent, or 1.1 million, of these procedures will be covered under Medicare. The cost data used in developing our savings estimates were collected by the OIG in connection with the study cited earlier in this document and is contained in the report of that study.

The available data on iridectomies indicate that savings in FY 1987 resulting from lowering the number of base units to four would be under $1 million. Because of technological changes that permit less expensive procedures to be substituted for iridectomies, we doubt that the rate of iridectomies performed on Medicare beneficiaries will increase in coming years. Therefore, we do not anticipate a higher annual savings rate in later years.

C. Expected Impact

Our proposal would primarily affect anesthesiologists by reducing their payments, as a group, by the amount of the estimated savings. The impact on an individual physician would depend on his or her practices in performing multiple concurrent procedures, and on the number of cataract procedures for which he or she provides monitored anesthesia services. Those physicians who provide monitored anesthesia services in a large number of cataract cases would be more heavily affected by our proposal than would those who provide these services in only a few cases. We believe relatively few anesthesiologists customarily perform more than four concurrent procedures.

We expect that, as a consequence of reducing payments for anesthesia services connected with cataract surgery and iridectomies, the number of anesthesiologists accepting assignment or participating in the Medicare program (as defined in section 1842(h) of the Act) may decrease. For FY 1986, approximately 22 percent of all anesthesiologists furnishing services to Medicare patients are participating in the program. The assignment rate for anesthesiology claims in FY 1983 (the latest year for which data are available) was approximately 45 percent.

Of course, the decision on the part of each anesthesiologist to participate in the program or to accept assignment would depend on a number of variables. For example, we believe that an estimation of income needs and a patient's perceived ability to pay would be prominent in an anesthesiologist's deliberations. To the extent that our proposal would affect an anesthesiologist's income, this would become a factor in the decision to either participate in the program or accept assignment.

However, our ability to determine these factors is severely limited both by the lack of data and the inability to create an adequate model of the decision making process. Therefore, we have no way of estimating how anesthesiologists would respond to the proposed change. Nevertheless, if the participation and assignment rates decline, beneficiaries would be exposed to greater financial liability. This may be another consequence of our proposal.

D. Alternatives Considered

We considered the following two general alternatives to the rule we are proposing:

- Reducing the number of anesthesia base units carriers would allow for *all* monitored anesthesia services.
- Reducing the number of anesthesia base units by an amount other than the amount we are proposing.

We had considered reducing the number of anesthesia base units allowable for determining monitored anesthesia payments to zero for all procedures in which these services are provided and basing payments only on the amount of time the anesthesiologist was in attendance. The rationale for this alternative was the fact that the risk to patients and the need for the services of anesthesiologists are minimal when a local anesthetic is used rather than a regional or general anesthesia. In administering a local anesthetic, the service the anesthetist or anesthesiologist performs is to monitor the patient's condition.

Upon consultation with industry representatives, however, we reexamined our data and concluded that the recommendations presented in the OIG report, discussed above in this preamble, and the alternatives noted required further changes. Therefore, we adopted the proposal presented in this document.

Under the proposal presented in this document, we considered reducing the number of base anesthesia units by as many as five. As explained elsewhere in this document, we examined the number of base units generally associated with other procedures performed in ASCs. Most of these procedures have an average of three units. We rejected the idea of allowing only three units because we believe that eye surgery is complicated by the location of the surgery, which restricts access to the patient's airway and requires surgical field avoidance. Yet it is also clear from the rapid increase in the number of cataract procedures being performed in ambulatory settings and the increased use of monitored anesthesia services in connection with both cataract procedures and iridectomies that a substantial reduction in anesthesia units from the present standard is warranted.

V. Other Required Information

A. Response to Public Comments

Because of the large number of items of correspondence we normally receive on proposed notices, we cannot acknowledge or respond to them individually. However, we will consider

all comments that are received by the date and time specified in the "Date" section of this notice, and, if we proceed with a final notice, we will respond to those comments in that notice.

B. Paperwork Reduction Act

This proposed notice does not impose any information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

(Sec. 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3); 42 CFR 405.502(g))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: July 17, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: July 30, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-18458 Filed 8-14-86; 8:45 am]

BILLING CODE 4120-01-M

[BERC-388-PN]

Medicare Program; Reasonable Charge Payment Limits for Cataract Extractions With Intraocular Lens Implants

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: In this notice, we propose to establish special reasonable charge payment limits for cataract extractions with intraocular lens implants performed by physicians. The proposal is intended to prevent excessive payment for these procedures.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on September 15, 1986.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-388-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-388-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Kenneth Marsalek, (301) 594-1115.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statute and Regulations

Section 1842(b)(3) of the Social Security Act (Act) requires that all payments under Part B of the Medicare program must be reasonable. Reasonable charge determinations under Part B are generally based on customary and prevailing charges derived from historic charge data. The reasonable charge for a service is generally the lowest of: (1) The actual charge (2) the customary charge made by a particular physician or supplier, or (3) the prevailing charge, which is set at the 75th percentile in the range of customary charges for similar services in the locality. An economic index limits the annual increases in prevailing charges for physicians' services.

This standard method of determining the reasonable charge for service can, in some instances, result in payments that may not be reasonable. When this occurs, the Medicare statute authorizes the Secretary to adopt special reasonable charge limits.

Therefore, in order to ensure that Medicare payments are reasonable, we published a final rule with comment period on August 11, 1986 in the Federal Register (51 FR 28710) that amended 42 CFR 405.502 to set forth factors to be considered and procedures to be followed in establishing special reasonable charge limits. The rule specifies that we may set a limit if we determine that the standard rules for calculating reasonable charges result in grossly deficient or excessive charges. The limits would be in the form of either a specific dollar amount or a special method to be used in determining reasonable charges to be allowed for a particular service or category of service.

The regulations at § 405.502(g)(1)(i) provide examples of circumstances which may result in grossly excessive charges. These include but are not limited to following circumstances:

- The marketplace is not competitive.
- Medicare is the primary source for payment.
- The charges involve the use of new technology for which an extensive charge history does not exist.
- The charges do not reflect changing technology, increased facility with that technology, or changes in acquisition or supplier costs.
- Prevailing charges in a locality are grossly in excess of prevailing charges in other localities.
- Charges are grossly in excess of acquisition or production costs.

The regulations further specify, at § 405.502(g)(3), that we will propose any limit in a notice to be published in the Federal Register and provide an opportunity for comment. When all comments have been fully considered, we will publish in the Federal Register our final determination and our response to the comments. Section 405.502(g)(4) provides that the proposed and final notices will also set forth the criteria and circumstances, if any, under which a specific exceptions process to the special limit would be established.

B. Cataract Surgery and Implantation of Intraocular Lenses

Cataract surgery is the most common and rapidly growing surgical procedure covered by Medicare. The total number of cataract operations increased from 415,000 in 1980 to 1.1 million in 1985 [1], an increase of 165 percent. Because cataract surgery is performed primarily on the elderly, Medicare pays for about 80 percent of all cataract operations.[2] Medicare payments under Part B for cataract surgery were an estimated $1 billion in 1985. In addition, in 1980 only 25 percent of patients having cataract surgery also received an intraocular lens (IOL) implant. By 1985, 90 percent of all cataract surgery included an IOL implant.[3]

Medical technology related to the diagnosis and treatment of eye diseases has changed rapidly in recent years. Improved diagnostic techniques for examining the retina, operating microscopes, lasers, and the development of IOLs have revolutionized the treatment of cataracts and diseases of the retina.

Until recently, cataract surgery was performed on an inpatient basis using the intracapsular method in which the entire lens and its capsules are removed intact. Now the procedure is primarily performed on an outpatient basis using

---

[1] "Medicare Reimbursement for Cataract Surgery Hearing Before the Subcomm. on Health of the House Comm. on Ways and Means", 99th Cong., 1st Sess. 29 (1985)

[2] *Id.* at 121.

[3] *Id.* at 119.

the extracapsular method in which the posterior capsule is left in place to provide support for the IOL.

The other major technological innovation related to cataracts has been the development of the IOL itself. Before IOLs, patients were fitted with unwieldy glasses or, more recently, contact lenses. With IOLs, these have become unnecessary.

II. Provisions of This Notice

We have determined that the standard methodology for determining reasonable charges for cataract procedures results in charges that are grossly excessive. We believe this occurs in part because Medicare is the primary source for payment and because current charges do not reflect the increased facility with new technology. In accordance with the procedures described in § 405.502(g), we are proposing to establish an upper limit on the amount of payment we make for cataract procedures.

A. Circumstances Requiring a Limit

Data from a variety of sources including the following studies suggested that cataract procedures are overpriced:

- "Toward Developing a Relative Value Scale for Medical and Surgical Services" by William C. Hsiao and William B. Stason, *The Health Care Financing Review*, Fall, 1979. This study showed that Medicare prevailing charges in Massachusetts per surgical hour were $390 for appendectomy, $362 for cholecystectomy, $342 for hysterectomy and $788 for lens extraction. When adjusted for the estimated time in pre- and post-operative care, the Medicare prevailing charges per surgical hour were $272 for appendectomy, $275 for cholecystectomy, $279 for hysterectomy and $679 for lens extraction. Copies of this study can be obtained from HCFA's Office of Research and Demonstrations, Publications and Information Resources, Oak Meadows Building, Room 1–A–9, 6325 Security Boulevard, Baltimore, Maryland 21207, (301) 597–2422.
- "Resource-Based Relative Values of Selected Medical and Surgical Procedure in Massachusetts" by The Department of Health Policy and Management, Harvard School of Public Health, and the Institute for Health Research of the Harvard Community Health Plan and Harvard University, December, 1985. This study shows that cataract surgery was overpriced by 27 percent compared to hysterectomy, 31 percent compared to appendectomy, 43 percent compared to cholecystectomy and 60 percent compared to modified radical mastectomy. Copies of the study can be obtained at a charge of $35 from the Massachusetts Rate Setting Commission, 1 Ashburton Place, Boston, Massachusetts 02108, (617) 727–1150.
- "What Should Medicare Pay for Surgical Procedures?" by The Center For Health Economics Research in June, 1986. This study showed that cataract extraction (intracapsular) is overpriced by 34 percent compared to hernia repair, 51 percent compared to cholecystectomy and 52 percent compared to lung lobectomy. Copies of the study can be obtained from the National Technical Information Service, (703) 487–4600. Refer to document number PB86–215605.
- "Physician Reimbursement Under Medicare: Options for Change" by the Congressional Budget Office, April 1986. This report indicated that if resource cost estimates developed by researchers at the Harvard School of Public Health were used, cataract extractions would be paid only 14 percent of current rates. Copies of the study can be obtained from the Congressional Budget Office, 2nd and D Streets, SW., Washington, DC 20515. Also, a summary of this report is included in the Commerce Clearing House *Medicare and Medicaid Guide*, paragraph 35411.
- "Medicare Cataract Implant Surgery" by the Office of Inspector General, Dept. of HHS in March, 1986. This report concluded that the efficiencies due to rapidly changing medical technology have not been reflected in physician fees for surgical procedures. Copies of the report can be obtained from the Office of Inspector General, Public Affairs, 330 Independence Avenue, SW., Room 5640, Washington, DC 20201, (202) 472–3142. Refer to Control #OAI–85–IX–046.

In addition, we have been advised informally by ophthalmologists that only about five minutes of additional time is required to implant an IOL. Because the prevailing charge is approximately 50 percent higher, this suggested that the incremental charge for implanting an IOL as compared to extracting the cataract alone was grossly disproportionate to the effort involved. Given these data and the magnitude of Medicare expenditures in cataract surgery, we conducted a study to determine whether other factors should be considered in determining the reasonable charge for cataract surgery. The study was designed to determine whether:

- Any changes in technology or increased facility with that technology had occurred in cataract surgery and whether the charge for the procedure reflects any change; and
- The insertion of an IOL increases the surgical procedure time and whether the incremental charge for an IOL implant is reasonably related to the time it takes to perform the implant.

We reviewed medical record data on cataract operations performed in calendar years 1980 and 1985, in 30 hospitals with the highest volume of cataract operations. These hospitals performed 11 percent of the cataract surgery in 1984. We reviewed random samples of beneficiary medical records to determine the average time required to extract a cataract and implant an IOL in calendar years 1980 and 1985 and the average time required to perform a cataract operation (extracapsular) both with and without an IOL implant. We reviewed only extracapsular procedures since they represent an estimated 90 percent of all cataract extractions.

The study concluded that the average time was 45 minutes for a cataract extraction with an IOL implant and 48 minutes for a cataract extraction without an IOL implant. However, the prevailing charges for the two procedures varied substantially. In addition, the study showed that between 1980 and 1985, the average time to extract a cataract without an IOL implant decreased from 62 to 48 minutes, a decrease of 23 percent and the average time to extract a cataract and implant an IOL decreased from 51 to 45 minutes, a decrease of 12 percent.

We estimate that the national average prevailing charge (unweighted for frequency) in 1985 was $1056 for extracapsular cataract extractions without an IOL implant (CPT–4 code 66940), $1,643 for extracapsular cataract extractions with an IOL implant (CPT–4 code 66984), $1,032 for intracapsular cataract extractions without an IOL implant (CPT–4 code 66920), and $1,622 for intracapsular cataract extractions with an IOL implant (CPT–4 code 66983). Thus, the procedure with the IOL had an average prevailing charge that was over 50 percent higher than the procedure without the IOL implant.

We do not know the origin of the marked difference in the prevailing charge between the IOL implant procedure and the procedure without the IOL. It may be that the procedures were initially priced as two separate procedures when the cataract was removed in one operation and an IOL implanted in a subsequent operation. When the two procedures began to be performed during a single operation, carriers may have applied guidelines relating to multiple surgery (that is, when more than one surgical procedure is performed during the same operation).

Generally, carriers pay for the major procedure plus partial amounts for other procedures. Whatever the origin, the policy is inappropriate when it results in a charge that is grossly disproportionate to the additional time or effort. A minimal increment in time should not result in an additional payment of as much as 60 percent. As noted earlier, this converts to an average additional prevailing charge allowance of almost $600 just for the IOL implant. Although there are additional pre-operative diagnostic tests performed associated with an IOL implant, carriers do not include these tests in the global charge for cataract extractions with IOL implants.

B. Payment Limits

While the study results did not disclose that extracapsular extractions with an IOL implant take longer than extractions without an IOL implant and although we did not include intracapsular extractions in the study, we were consistently advised that it takes five minutes to implant an IOL. A film shown to HCFA management by the American Academy of Ophthalmology (AAO) showing an extraction with an IOL implant confirmed that the incremental time to insert the lens was insignificant.

We believe the reason why our study did not demonstrate even this minimal time differential is that the study measured only the total procedure time for extractions with and without an IOL implant. We were advised that patients who do not have an IOL implant may have some unique characteristics such as a history of glaucoma, diabetes or other medical complications occurring during surgery which could slightly increase the surgical time for the extraction only. In any case, it seems clear from the study, the information volunteered by individual ophthalmologists and the demonstration film presented by AAO, that any additional time for the lens implant is about five minutes. We certainly would welcome any comments to the contrary. We accept the fact that while the time differential is minimal there is an additional level of effort necessary to implant an IOL.

We ultimately propose to limit the prevailing charges for the cataract extraction with an IOL implant to 110 percent of the prevailing charge for the cataract extraction without the IOL implant. We believe a ten percent differential for the procedure when an IOL is implanted would result in an allowance which is realistic and equitable in relation to the allowance for the extraction alone. Based on prevailing charges currently in effect, a differential of ten percent would still result in incremental payments ranging from $72 to $196. Nevertheless, we recognize that this might result in substantial reductions in Medicare allowances for cataract surgery, particularly in areas where the current differential in prevailing charges exceeds the national average. Therefore, since we are concerned about the potential effect on beneficiaries and physicians of moving immediately to 110 percent of the prevailing charge without intraocular insertion, we are proposing to phase-in the change over a three-year period. We believe that this three-year transition would allow time for markets to adjust, prices to react, and smooth the implementation of the proposed policy. We propose to phase in this three-year transition as follows:

- For services furnished on or after the effective date of this notice through December 31, 1987, the limit on prevailing charges for a cataract extraction with an IOL implant would be set at 120 percent of the prevailing charge for the extraction without an IOL implant.
- For services furnished during calendar year 1988, the limit would be set at 115 percent.
- For services furnished during calendar year 1989 and thereafter, the limit would be set at 110 percent.
- We believe this transition would be fair to physicians, beneficiaries and the Medicare program. However, we welcome any comments on alternatives that might be considered.

Thus, for cataract extractions with an IOL implant (CPT–4 codes 66983 and 66984), reimbursement initially would be limited to the lower of the actual prevailing charge or the maximum prevailing charge allowed by the Medicare Economic Index (MEI) in each locality for the cataract extraction without an IOL implant (CPT–4 codes 66984 and 66940) multiplied by 120 percent (1.20). We propose to use the charge for extracapsular procedures without IOL implants (CPT–4 code 66940) as the basis for calculating the payment limit on extracapsular procedures with an IOL implant (code 66984) and to use the charge for intracapsular procedures without an IOL implant (code 66920) as the basis for calculating the payment limit on intracapsular procedures with an IOL implant (code 66983). We are proposing that the limit apply only when an IOL is implanted during the same operation as the cataract extraction. Insertion of an IOL subsequent to cataract removal (a separate procedure, CPT–4 code 66985) would not be affected by the proposed limit. However, in order to discourage any inappropriate scheduling of operations due to higher reimbursement levels, we invite comments on whether payment for insertion of an IOL subsequent to cataract removal (CPT–4 code 66985) should be limited by some percentage (for example, 50 percent or some other percentage) of the payment for the cataract extraction.

For the purpose of this notice, we are assuming that the base procedures used to apply the payment limits, that is, the extracapsular and intracapsular cataract extractions without an IOL implant are priced correctly. However, because the study showed a reduction in the time it takes to do the base procedure between 1980 and 1985 and due to additional data from other studies of cataract procedures (see the list of studies in section II.A for examples), we believe that the base procedures may be overpriced.

We are continuing to review the base procedures (that is, the extracapsular and intracapsular cataract extractions without IOL insertions) to determine whether they are reasonably priced. We invite comments on the pricing of the base procedures, the reports cited and other evidence regarding whether the procedures are reasonably priced, as well as comments on the establishment of the limits proposed in this notice.

C. Exceptions Process

As we mentioned earlier, the provisions of the regulations under which these limits on reasonable charges are being issued (§ 405.502(g)) state that the proposed notice would set forth the criteria and circumstances under which a carrier may grant an exception to the limits. We considered providing an exception to the proposed limit which would have exempted physicians in very low charging areas from the limit regardless of the payment differential between an extraction with and without an IOL implant. However, we rejected this idea because the limit is based solely on the appropriateness of the payment level for the differential for implanting an IOL and not on the appropriateness of the payment level for the extraction only. Therefore, we consider an incremental payment for implanting an IOL in excess of the stated percentages unreasonable, regardless of the payment level for the extraction alone.

While we are not proposing to establish any special exceptions policy in this notice, carriers do have the authority under § 405.506 to reimburse additional amounts if there are unusual

circumstances or medical complications requiring additional time, effort, or expense that support an additional charge, if it is acceptable medical practice in the locality to make an extra charge in these cases.

III. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed notices that are likely to meet criteria for a "major rule". A major rule is one that would result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographical regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We also prepare and publish an initial regulatory flexibility analysis, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), for proposed notices unless the Secretary certifies that the notice would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider all ophthalmologists to be small entities.

We estimate that, as a result of reducing payments to ophthalmologists for performing cataract extractions with IOL implants, the Medicare program would eventually realize annual savings of $100 million or more. While the available data do not permit us to determine which ophthalmologists would be most affected by this notice, we believe that because most ophthalmologists perform cataract surgery and because Medicare patients account for about 80 percent of all IOL implants performed in the United States, most ophthalmologists could be affected by this proposed notice. We are, therefore, providing an analysis that meets RFA criteria as well as E.O. 12991.

B. Affected Entities

We believe this notice would affect most ophthalmologists engaged in private practice throughout the United States. Data for calendar year 1983 indicate that 13,465 ophthalmologists were engaged in patient care *(Physician Characteristics and Distribution in the U.S., 1984 Edition,* published by the Department of Data Release Services, American Medical Association). The following table shows the distribution of ophthalmologists across the country:

Distribution of Ophthalmologists Across the United States by a Census Division [1]

	Percent
Total	[2] 99.2
New England	6.0
Middle Atlantic	19.9
East North Central	14.8
West North Central	6.4
South Atlantic	16.6
East South Central	4.8
West South Central	9.8
Mountain	4.9
Pacific	16.0

[1] Source: *Physician Characteristics and Distribution in the United States, 1984 Edition.* 112, 118–126.
[2] Sum of division percentages does not equal 100 percent because of rounding.

Approximately 42.5 percent of all ophthalmologists are located along the east coast of the United States with the Middle Atlantic division having the greatest number of ophthalmologists involved in patient care. The East South Central division, by contrast, has the fewest number of ophthalmologists.

We do not possess accurate data on the distribution of cataract procedures. However, it seems reasonable to conclude that the distribution of procedures would approximate that of ophthalmologists.

C. Savings

Trending the available historical data [4] forward through FY 1991, we estimate that, as a result of phasing in the 110 percent payment limit, savings of about $125 million would be achieved after the first year. By FY 1991, annual savings would reach $275 million. Price inflation, growth in the Medicare eligible population and increased utilization of IOLs, we expect, would account for an additional $325 million in savings over the next five years. These growth projections are based on the assumption that the Medicare Economic Index would increase at about 5 percent per year, and growth in the eligible population and IOL utilization would be at about 6.6 percent per year. The chart below, presents total savings estimates and the separate projected savings resulting from the limit and the factors affecting savings increases over the five fiscal years under consideration:

SAVINGS [1]

[In millions]

	Limit	Volume growth [2]	Price growth	Total
Fiscal year:				
1987	[3] $125	0	0	$125
1988	225	$20	$10	255
1989	260	40	25	325
1990	275	50	45	370
1991	275	75	60	410

[1] Rounded to the nearest $5 million and assumes an effective date of January 1, 1987.
[2] Volume growth includes both the growth in the Medicare eligible population and utilization growth.
[3] The savings amount reflects the lag in bill submission which would occur mostly in the first year the limit is implemented.

In developing our savings estimates, we computed the payment amount for cataract procedures with IOLs as a proportion of total Part B payments. We then reduced this amount by the fraction of payments represented by the application of the proposed limit. Adjustments were then made to account for the estimated amount of beneficiary copayments and the proportion of physician charges that would be affected by the limit.

The direct impact on ophthalmologists' median gross income on average is expected to be about 5.3 percent for FY 1987. This assumes the projected savings rate for FY 1987 applied over a full twelve month period and is calculated on the basis of a median gross income for ophthalmologists of $296,000 reported for 1984.[5]

Also, we used the number of ophthalmologists reported as being directly involved in patient care as of December 31, 1983 [6] and assume they all perform cataract surgery.

It must be noted that the estimated reduction in ophthalmologists' median income does not take into account the increase in income as a result of inflation, the likely increase in the number of ophthalmologists involved in patient care and current or future assignment rates. All of these factors, if included in our computation, would lower the estimated impact of the limit on income.

D. Expected Impact

Ophthalmologists are likely to perceive the reduction in payments for procedures involving IOL implants as having an adverse effect on their practice income. The extent of the impact on physician income would be affected by such factors as, other health

[4] Stark, *et al.*, "Update of Intraocular Lenses Implanted in the United States", *American Journal of Ophthalmology.* Vol. 98, No. 2, August 15, 1984, 238–239.

[5] Owens, "Doctors' Earnings: The Year of the Big Surprise", *Medical Economics,* September 9, 1985.

[6] *Physician Characteristics and Distribution in the U.S., 1984 Edition,* Department of Data Release Services, American Medical Association, 112.

insurance held by the beneficiary and its payment limits, the availability of other payment sources, and the extent to which physicians' income is derived from performing cataract procedures with IOLs.

Possible responses on the part of ophthalmologists could be to raise charges for other procedures or for unassigned claims, seek to increase patient load or the volume of procedures, reduce the number of claims for which they would be willing to accept assignment, or not continue as participating physicians (that is, required to accept assignment on all Medicare claims). Some of these actions could expose beneficiaries to greater financial liability for these services. For the participation period beginning May 1, 1986, approximately 28 percent of ophthalmologists have agreed to be participating physicians (that is, they will accept assignment on all Medicare claims). The assignment rate for services provided to Medicare patients by ophthalmologists for calendar year 1983 (the latest year for which we possess data) was 44.3 percent.

Because we are concerned that the number of ophthalmologists agreeing to be participating physicians or the assignment rate of nonparticipating ophthalmologists could drop as a result of this proposal, we are considering adopting certain measures, permitted under the authority of the current law, to help protect beneficiaries from the excessive financial liability that could accompany a decline in the participation and assignment rates. Among the various measures which we are considering are the following:

- Holding discussions with beneficiary representative groups on ways to educate beneficiaries on how to be better shoppers for cataract surgery, how better to find a participating physician who can provide cataract surgery, and how to obtain information on Medicare allowances and physician charges.
- Providing beneficiaries with general information on this Medicare initiative, the Medicare participating physician program, and other information to enable them to choose wisely among ophthalmologists providing services to Medicare patients.
- Monitoring trends in ophthalmologists' participation and assignment rates, and extra-billing liability for cataract surgery.
- Meeting with physician representative groups and groups of physicians to discuss this Medicare initiative, their charges for cataract surgery and the implications of their charges for financial burdens on beneficiaries.

We specifically invite public comment on these or other approaches to minimizing beneficiary financial liability as a result of this initiative.

It is not clear, however, that a reduction in Medicare payments automatically would lead to a decline in the number of claims physicians would accept on assignment. A study of physician assignment rates before and after a major change in the Medicare physician payment methodology suggests that the assignment rate for surgical services is less sensitive to changes in the payment levels than are assignment rates for medical, laboratory and radiology services. ("Determination of Physician Assignment Rates by Type of Services", Thomas Rice, *Health Care Financing Review;* Summer, 1984, Vol. 5 No. 4, pp. 33–42.)

E. Alternatives Considered

As explained earlier in this document, we considered including an exception process that would be applied to physicians in low charging localities, but rejected this type of exception as inappropriate. Under E.O. 12291 and the RFA, we are also required to consider the consequence of not taking the proposed action. We have rejected this alternative as being unacceptable for several reasons. Based on the amount of time required to implant an IOL compared to the same procedure without the implant, there does not appear to be any justification to pay a differential in excess of the stated percentages for the cataract extraction with lens implant. One of our major responsibilities is to safeguard the Medicare Trust Funds and to ensure that they are expended in a reasonable and judicious manner for services that are medically necessary. That is why we are proposing these limits: to institute payments for cataract procedures involving the implantation of IOLs that are reasonable compared to payment levels for the identical procedure without the IOL.

Another alternative we seriously considered was implementing the 110 percent payment limit immediately without any transition period. We recognized, however, that imposing the limit in this fashion could severely disrupt some physicians' income and could create hardship in some cases. To allow time for price adjustments and changes in physician practice patterns in response to the new limits, we decided, instead, to phase in the limits gradually over a three year period, as described earlier in this document.

V. Other Required Information

A. Response to Public Comments

Because of the large number of items of correspondence we normally receive on proposed notices, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the date and time specified in the "Date" section of this notice, and, if we proceed with a final notice, we will respond to those comments in that notice.

B. Paperwork Reduction Act

This proposed notice does not impose any information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

(Sec. 1842(b)(3) of the Social Security Act (42 U.S.C. 1395u(b)(3); 42 CFR 405.502(g))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: July 28, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: August 6, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86–18459 Filed 8–14–86; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–86–1628]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ACTION: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Submission of Proposed Information Collection to OMB

Proposal: Single Family Mortgage Insurance on Hawaiian Home Lands
Office: Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, and Small Businesses or Organizations
Estimated Burden Hours: 120
Status: New
Contact: Gerald A. White, HUD, (202) 755-6700; Robert Fishman, OMB, (202) 395-6880

Submission of Proposed Information Collection to OMB

Proposal: Energy Conservation Requirements Handbook 4350.1, Chapter 12
Office: Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 17,000
Status: Reinstatement
Contact: James J. Tahash, HUD, (202) 426-3944; Robert Fishman, OMB, (202) 395-6880

Proposal: Lead-Based Paint Hazard Elimination in CDAG, UDAG, Secretary's Fund, Section 312 Rehabilitation Loan, Rental Rehabilitation and Urban Homesteading Programs
Office: Community Planning and Development
Form Number: None
Frequency of Submission: Recordkeeping
Affected Public: State or Local Governments
Estimated Burden Hours: 4,000
Status: New
Contact: Don I. Patch, HUD, (202) 755-6587; Robert Fishman, OMB, (202) 395-6880

Proposal: Manufactured Housing Complaint Index (SAA Reports)
Office: Housing
Form Number: HUD-54889
Frequency of Submission: Quarterly
Affected Public: State or Local Governments
Estimated Burden Hours: 2,975
Status: Extension
Contact: Stuart Margulies, HUD, (202) 755-6584; Robert Fishman, OMB, (202) 395-6880

Proposal: Monthly Reports for Establishing New Income
Office: Housing
Form Number: HUD-93479, 93480, and 93481
Frequency of Submission: Monthly
Affected Public: Businesses or Other For-Profit and Non-Profit Institutions
Estimated Burden Hours: 168,000
Status: Extension
Contact: Matt Andrea, HUD, (202) 755-6570; Robert Fishman, OMB, (202) 395-6880

Proposal: Certificate of Need for Health Facility and Assurance of Enforcement of State Standards
Office: Housing
Form Number: HUD-2576-HF
Frequency of Submission: On Occasion
Affected Public: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions
Estimated Burden Hours: 21
Status: Extension
Contact: C. Edward Lewis, HUD, (202) 755-6223; Robert Fishman, OMB, (202) 395-6880

Proposal: Mortgage Record Change
Office: Administration
Form Number: HUD-92080
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 194,000
Status: Reinstatement
Contact: Robert Wiggins, HUD, (202) 426-8980; Robert Fishman, OMB, (202) 395-6880

Proposal: Housing Counseling Program and Recordkeeping Requirements (Non-funded)
Office: Housing
Form Number: HUD-9900, 9902, 9903, and 9909
Frequency of Submission: Semi-annually
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 3,175
Status: Reinstatement
Contact: O. T. Miles, HUD, (202) 755-6664; Robert Fishman, OMB, (202) 395-6880

Proposal: Low-Rent Public Housing Construction Report
Office: Public and Indian Housing
Form Number: HUD-5378
Frequency of Submission: Semimonthly
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 720
Status: Extension
Contact: Charles James, HUD, (202) 755-6460; Robert Fishman, OMB, (202) 395-6880

Proposal: Single Family Application for Insurance Benefits
Office: Administration
Form Number: HUD-27011, Parts A, B, C, D, and E
Frequency of Submission: On Occasion
Affected Public: Businesses or Other For-Profit
Estimated Burden Hours: 70,500
Status: Revision
Contact: John L. Stahl, HUD, (202) 755-5163; Robert Fishman, OMB, (202) 395-6880

Proposal: Mandatory Meals Program In Multifamuly Rental and Cooperative Projects for the Elderly
Office: Housing
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households, Businesses or other For-Profit, Federal Agencies or Employees, and Non-Profit Institutions
Estimated Burden Hours: 4,800
Status: New
Contact: James J. Tahash, HUD, (202) 426-3944; Robert Fishman, OMB, (202) 395-6880.

Proposal: Application for Funding or Refunding the Community Housing Resource Board (CHRB) Program

Office: Fair Housing and Equal Opportunity
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households
Estimated Burden Hours: 19,800
Status: Extension
Contact: Nathaniel K. Smith, HUD, (202) 755–7007; Robert Fishman, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 29, 1986

Donald J. Keuch, Jr.,

Deputy Assistant Secretary.

[FR Doc. 86–18472 Filed 8–14–86; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–86–1629; FR–2270]

Availability of Funding Under the Fair Housing Assistance Program; Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of fund availability.

SUMMARY: This notice solicits applications, from eligible State and local fair housing agencies, for funding under the Fair Housing Assistance Program (FHAP). Agencies must meet specific eligibility criteria set forth in this notice and in 24 CFR Parts 111 and 115 in order to qualify for consideration under this program. This notice pertains to Type-II Competitive Funding applications only.

FOR FURTHER INFORMATION CONTACT: Thomas Jankowski, Director, Office of Fair Housing Enforcement and Section 3 Compliance, Office of Fair Housing and Equal Opportunity, Room 5208, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone: (202) 755–0455. (This is not a toll-free number.) Application kits are available upon written or telephone request. To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

DATE: An application for Type II competitive FHAP funding must be submitted between August 15, 1986 and September 15, 1986, unless it qualifies for a late application exception as specified in the application kit and is received before funds are awarded.

SUPPLEMENTARY INFORMATION: The Fair Housing Assistance Program (FHAP) was authorized by Congress to enhance the fair housing capabilities of State and local civil rights agencies. The FHAP has two types of funding: Type I-Non-Competitive Funding and Type II-Competitive Funding. Type I-Non-Competitive Funding includes capacity building, training, complaint monitoring and reporting systems, and contributions. Type II-Competitive Funding includes specialized project proposals developed by State and local agencies to enhance their fair housing programs. This announcement pertains to applications for Type II funding only. (Notice of Availability of Type I Non-Competitive Funding was published June 11, 1986.)

Background

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19 (the Federal Fair Housing Law), prohibits discrimination in the sale, rental or financing of housing and in the provision of brokerage services. Section 810(c) provides that wherever a State or local fair housing law is recognized as providing rights and remedies substantially equivalent to those in the Federal Fair Housing Law, the Secretary is required to notify the appropriate State or local agency of any complaint filed with HUD that appears to constitute a violation of the State or local law. Section 816 provides that the Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, may use their services and their employees and may reimburse the agencies for services rendered in carrying out the Federal Fair Housing Law.

Other Matters

This program is described in the Catalog of Federal Domestic Assistance at 14.401, Fair Housing Assistance Program.

Application requirements associated with this program have been approved by OMB and assigned approval number 2529–0005.

Executive Order 12372

Applicants are advised that they must follow Department procedures established to implement Executive Order 12372, "Intergovernmental Review of Federal Programs." On June 24, 1983 HUD published regulations in the **Federal Register** (48 FR 29206) to implement E.O. 12372. These procedures replace the intergovernmental consultation system developed under OMB Circular A–95, which expired on September 30, 1983. The Executive Order authorizes States to establish their own process for review and comment on the proposed Federal financial assistance programs. To comply with the Executive Order, all applicants for FHAP must provide an opportunity for review and comment to State and local elected officials if: (1) The applicant's State has established a State process and (2) the FHAP has been specifically identified for review by the State process. A list of State Single Points of Contact will be included with application kits requested under this announcement. If the Order applies, the applicant should submit its proposal to HUD and to the State process simultaneously.

Applicants must provide HUD with a written assurance certifying the date on which a copy of the proposal was furnished to the State process. A 60-day comment period will begin five days from the date identified in the certification.

The Single Point of Contact and other commenting parties must mail their comments to Director, Office of Fair Housing Enforcement and Section 3 Compliance, Office of Fair Housing and Equal Opportunity, Room 5208, 451 Seventh Street, SW., Washington, DC 20410–2000.

I. Eligibility

To be eligible to apply for funds under the Program, an agency must meet the criteria prescribed in 24 CFR 111.104. Specifically: (1) the State or local fair housing law administered by such agency must have been recognized (and such recognition must continue to be outstanding) as providing substantially equivalent rights and remedies to those provided by Title VIII of the Civil Rights Act of 1968, under HUD procedures set out in 24 CFR Part 115 and (2) the agency must have executed a written Memorandum of Understanding with HUD that describes the working relationship to be in effect between the agency and the appropriate Regional Office of Fair Housing and Equal Opportunity.

Notwithstanding the preceding paragraph, under 24 CFR 111.104(b), an agency may submit a funding proposal under the Fair Housing Assistance Program if HUD has determined that the State or local fair housing law administered by such agency provides, on its face, substantially equivalent rights and remedies, but has not yet granted recognition to such law in accordance with 24 CFR Part 115. Evidence of such a determination by the Department shall consist of: (1) Publication of an invitation for written comments as described in 24 CFR

115.6(b), or (2) publication of a proposal under 24 CFR 115.4(b), as in effect before October 8, 1984, to add the jurisdiction to the list of recognized jurisdictions. In either such case, the agency may enter into negotiations with the Regional Office of Fair Housing and Equal Opportunity in order to develop a Memorandum of Understanding and may, at the same time, submit a funding proposal. In the event that an agency that would otherwise qualify for funds has not been recognized as substantially equivalent by the time HUD has obligated funds to recognized, fundable agencies, HUD will obligate remaining funds to recognized agencies in accordance with the competitive provisions. No funds will be committed to any agency until it has been formally recognized as substantially equivalent. All proposals for Type II funding must have relevance to matters pertaining to housing discrimination based on an individual's race, color, religion, sex or national origin.

II. Method of Competition

A. Scope

Applications are solicited for specialized project proposals as described in 24 CFR 111.103 and in section IIB, below.

B. Geographic Competition

HUD has established three geographic areas for purposes of this Notice: Area A consists of agencies in the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, New Jersey, New York, Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. Area B consists of agencies in the States of Florida, Kentucky, North Carolina, Tennessee, New Mexico, Oklahoma, Texas, Iowa, Kansas, Missouri, and Nebraska. Area C consists of agencies in the States of Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, Colorado, Montana, South Dakota, Arizona, California, Hawaii, Nevada, Alaska, Oregon, and Washington.

Funding priority will be given to proposals that address one or more of the following subject areas:

1. Proposals designed to develop and conduct a testing/auditing program for specific protected classes or special market areas for enforcement or litigation purposes;

2. Proposals designed to identify new or subtle practices of discrimination—for example, practices in rental, sales, terms and conditions, insurance or financing—and to implement programs to eradicate such practices;

3. Proposals designed to develop and implement outreach efforts to heighten public awareness of all forms of housing discrimination cognizable under Title VIII, and of fair housing rights and responsibilities, through the use of public education, outreach and/or technical assistance; and

4. Proposals designed to encourage the formulation and implementation of programs relating to the enforcement of fair housing by non-profit organizations.

In addition, applications will be accepted to support specialized project proposals which include:

(1) Technical assistance projects to enable the agency to work with the real estate industry, private fair housing groups, educational institutions, and other government entities and similar constituents.

(2) Projects designed to create, modify or improve local, regional or national data and information systems; and

(3) Projects designed to improve an agency's capability to ensure fair housing through new or redirected approaches to the agency's internal structure or compliance techniques.

C. Classes of Funding

HUD's previous experience in competitive funding under this program indicates that larger agencies—particularly those State agencies in the more populous States—have a decided advantage over smaller State and local agencies in an open competition for Type II funds. Accordingly, two classes of funding have been established.

1. *Class A.—Large Jurisdictions*—All agencies that serve jurisdictions with populations of 3 million or more, *or* that receive an annual housing discrimination complaint workload of 100 or more, will be treated as Class A agencies. For purposes of this determination, the complaint workload is evidenced either by the total number of cases dual-filed with the agency and with HUD during the period January 1, 1985 through December 31, 1985, *or* by the total number of cases received by HUD from the geographical area within the agency's jurisdiction during the same period—whichever is greater. All Class A agencies *must* compete within Class A.

2. *Class B.—Small Jurisdictions*—All agencies that serve jurisdictions with populations below 3 million *and* that receive an annual housing discrimination complaint workload of fewer than 100 complaints (as described above) will be treated as Class B agencies. Class B agencies may elect to compete in either Class A or Class B, but not in both.

3. *Multiple Agency Proposals.* Eligible agencies may wish to join together in submitting a proposal in Class A or Class B. Multiple agency proposals are acceptable subject to the following conditions:

(a) One agency must be designated as the applicant, submitting on behalf of itself with all others as proposed subcontractors. In the event of an award, the applicant will be treated as the recipient.

(b) Agencies electing to participate in a multiple agency proposal, whether as an applicant or as a subcontractor, may NOT submit individual proposals.

(c) Class A agencies submitting a multiple agency proposal as the applicant must compete within Class A. Class B agencies submitting a multiple agency proposal as the applicant may elect to compete in either Class A or Class B, but not both.

(d) A certification of agreement with the proposal from all jurisdictions with which the applicant fair housing agency proposes to subcontract must be included in the application.

D. Program Totals and Agency Maximums

Approximately $2,650,000 is available under this Notice. Each of the three identified geographic areas will compete for approximately $900,000. A total of $1,250,000 is available for award to Class A applicants, with a maximum of $200,000 per applicant for single agency proposals and $300,000 for multiple agency proposals. A total of $1,400,000 is available for award to Class B applicants, with a maximum of $100,000 per agency for single applicant proposals and $150,000 for multiple agency proposals.

E. Applications

An agency may submit only one Type II proposal. Applicants must submit all information required in the Type II application kit and must include sufficient information to establish that the proposal meets the criteria set forth at 24 CFR 111.106. Proposals must include a clear narrative description of the project and a timetable delineating the points at which the various components of the project will be initiated and completed.

Projects should be no longer than 18 months in duration. Applicants should note that any research activities must

serve to enhance the agency's fair housing program. Projects that appear to be aimed solely or primarily at research or data gathering unrelated to existing or planned fair housing enforcement or outreach programs will not be approved. Data gathering activities will require OMB approval under the Paperwork Reduction Act before commencement of the activity.

F. Award Procedures

Applications for Type II funding will be evaluated competitively within each geographic area by Class, and awarded points based on the Factors for Award identified below. Proposals will be reviewed by geographic area Review Teams. The final decision rests with the Assistant Secretary or his or her designee.

Factors for Award

1. Substantive Factors. (65 points total). a. Degree to which a proposed project addresses problems and issues that are significant fair housing problems and issues within the jurisdiction, as explained in the proposal or based upon other information available to HUD. (25 points)

b. Degree to which the project can be expected to have a successful impact upon the problems or issues that the proposal addresses, including the degree to which the project is of continuing use in dealing with housing discrimination. (20 points)

c. Clarity and thoroughness of project description. (20 points)

2. Planning and Management Factors. (35 points total). a. Experience and qualifications of existing personnel identified for key project positions, or a decription of the process and qualifications to be used for selection of key personnel, including subcontractors/consultants. (Where project-related duties will not be the sole responsibility of key personnel, applicant should include the percentage of time each person will spend on the project). (10 points)

b. Reasonableness of estimated timetable for implementation and completion of project. (12 points)

c. Adequacy and clarity of proposed procedures to be used by the agency for monitoring progress of the project and ensuring timely completion. (13 points)

3. Proposals that include the participation of private, nonprofit fair housing, civil rights and legal assistance groups will be eligible for a maximum of 10 bonus points.

4. Cost Factors—An applicant's proposed costs will be considered, together with the factors in paragraphs 1 and 2, above, in determining the proposals most advantageous to the Government.

III. Applicant Notification and Award Procedures

A. Notification

No information will be available to applicants during the period of HUD evaluation except for notification in writing to those applicants that are determined to be ineligible. Awards for Type II projects are expected to be announced by HUD within two months of the closing date.

B. Negotiations

After HUD has ranked the applications and made an initial determination of applicants whose scores are above the funding threshold (but before the actual award), HUD may require that applicants in this group participate in negotiations and submit application revisions resulting from those negotiations. In cases where it is not possible to conclude the necessary negotiations successfully, awards will not be made. Negotiation will not be used to raise the rankings of proposals that would otherwise fall below the funding threshold.

If an award is not made to an applicant whose proposal is above the initial funding threshold because of an inability to complete successful negotiations, and if funds are available to fund any proposals that may have fallen below the initial threshold, HUD will establish a new funding threshold and proceed as described in the preceding paragraph.

C. Funding Instrument

It is HUD's normal practice to fund successful applicants under cost-reimbursable Cooperative Agreements. HUD reserves the right to employ the form of agreement determined to be most appropriate after negotiation with the applicant.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.S.C. 3601–19); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 12, 1986.

William E. Wynn,

Acting General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 86–18550 Filed 8–14–86; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–06–4322–12; 1784]

Salt Lake District; Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of advisory board meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92–463 that the Salt Lake District Grazing Advisory Board will be meeting on September 18, 1986.

The Board will meet at 9:00 a.m. at the Salt Lake District, Bureau of Land Management office at 2370 South 2300 West, Salt Lake City, Utah. The purpose of the meeting will be to: (1) Organize and elect officers for the new board; and (2) review range improvement projects for the upcoming year.

The meeting is open to the public and interested persons may make oral statements at the meeting between 10:00 and 10:30 am, or file a written statement for the Board's consideration. Persons wishing to make statements to the Board are requested to contact Glade Anderson at 524–5348 prior to September 12, so adequate time can be included on the agenda.

FOR FURTHER INFORMATION CONTACT: Glade Anderson, Range Conservationist, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 86–18435 Filed 8–14–86; 8:45 am]

BILLING CODE 4310–DQ–M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Department of the Interior.

ACTION: Notice of the Receipt of a proposed development operations coordination document.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of the proposed Mississippi Canyon Block 397 Federal Unit Agreement No. 14–08–0001–20256, submitted on July 23, 1986, a proposed Development Operations Coordination Document describing the activities it proposes to

conduct on the Mississippi Canyon Block 397 Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Parkway, New Orleans, Louisiana 70123.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 114, open weekdays 9:00 a.m. to 3:30 p.m., 1420 South Clearview Parkway, New Orleans, Louisiana 70123, phone (504) 736-2519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: August 5, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-18466 Filed 8-14-86; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

DEPARTMENT OF ENERGY

Western Area Power Administration

Trinity River Division, Central Valley Project

AGENCIES: Department of the Interior, Bureau of Reclamation; Department of Energy, Western Area Power Administration.

ACTION: Notice of Proposed Options for Financing Development and Marketing of the Power from a new Lewiston Powerplant. Announcement of a Public Information/Comment Forum and Call for Comments and Proposals.

SUMMARY: Lewiston Dam is part of the Trinity River Division (TRD) of the Central Valley Project (CVP). The Bureau of Reclamation (Reclamation) and Western Area Power Administration (Western) propose to study the feasibility of additional power development at Lewiston Dam and, if viable, develop and market the power. Current Federal policy encourages non-Federal financing of the study and development of power resource potential. By this notice, Reclamation and Western are jointly initiating a public consultation and comment process to explore potential options for non-Federal financing of these activities.

This notice presents background project information, proposed options for selecting a non-Federal financing entity, and proposed selection criteria. Interested parties are requested to submit their proposals as well as any pertinent comments. Reclamation and Western will select a financing option and entity for the project in a future **Federal Register** notice.

DATES AND ADDRESSES: A public information/comment forum will be held September 5, 1986, 10:00 a.m., Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, California. Reclamation and Western representatives will explain the proposed options and discuss alternatives for financing the additional power facilities and marketing of the associated power.

Written comments and proposals are due no later than 4:00 p.m. PDT, October 8, 1986. Certified mail is recommended. Comments and proposals should be sent to: Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825. Reclamation will provide Western with copies of all comments and applications received.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Conwell, Chief, Energy Resources, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, (916) 978-4952, concerning power development matters, or Mr. David Magaw, Assistant Area Manager for Power Marketing, Sacramento Area Office, Western Power Administration, 1825 Bell Street, Sacramento, California 95825, (916) 978-4421, concerning power marketing matters.

SUPPLEMENTARY INFORMATION: Reclamation is responsible for planning, designing, constructing, operating, and maintaining electrical power generation facilities as authorized by Congress. Reclamation is also responsible for allocating all costs for Reclamation project purposes and determining the reimbursable costs to be recovered by revenues. Western is responsible for marketing that power which is surplus to project needs, constructing transmission facilities, making transmission arrangements, assuring recovery of all costs assigned to power for repayment, and for setting power and transmission rates. Reclamation and Western will work together in the negotiation and execution of contracts relating to the financing of the proposed power facilities.

The Lewiston Dam Powerplant is a feature of the Trinity River Division, Central Valley Project, constructed and operated pursuant to the Act of August 12, 1955 (69 Stat. 719). The CVP was developed primarily for irrigation, but it also provides flood control, improves Sacramento River navigation, supplies domestic and industrial water, generates electric power, conserves fish and wildlife, creates opportunities for recreation, and enhances water quality. Reclamation owns and operates a 350-kW powerplant at Lewiston Dam, and Western markets the power generation pursuant to section 302 of the Department of Energy Organization Act.

The existing 350-kW powerplant was sufficient until January 1981 when the Secretary of the Interior decided to increase the annual downstream water releases for fish. The annual releases at Lewiston Dam are being increased from 120,500 acre-feet to 340,000 acre-feet for a 12-year evaluation period which started on October 1, 1984. At the end of the 12-year period, the Fish and Wildlife Service will submit a report to the Secretary summarizing the effectiveness of restoration of flows and other measures including intensive stream and watershed management programs in rebuilding Trinity River salmon and steelhead stocks. The report will specifically address the adequacy of instream habitat at 140,000, 220,000, and 287,000 acre-feet annual release levels for all water-year types and the need to maintain, increase, or decrease the full 340,000 acre-feet CVP yield allocation. The report may also address the possible rescheduling of the allocated CVP yield by water type and other measures necessary to better maintain favorable instream habitat conditions. The increased water releases during the study period, and possibly beyond, create an undeveloped power potential.

In accordance with current administration policy, Reclamation and Western are inviting non-Federal entities to participate in financing the study design, and construction of additional power facilities at Lewiston Dam.

Description of the Proposed Power Facilities

In the preliminary studies performed by Reclamation, it was determined that the most economical addition to the power facilities at Lewiston Dam would

consist of a 600-kW genertor that would be driven by an indoor vertical Francis Turbine and other appurtenant equipment as necessary for interconnection with the local power grid. This 600-kW powerplant would generate about 5,000,000 kWh in a normal water year. The capacity, however, would not be dependable because of less generation due to reduced water releases in dry (220,000 acre-feet) and critically dry (140,000 acre-feet) years. The 600-kW size was selected because it was the largest size powerplant that could be developed without increasing the dam's outlet works capability. The preliminary studies also showed that an increase of the dam's outlet capability for a powerplant size greater than 600-kW would not be economically feasible.

Powerplant Construction Costs

A preliminary estitmate of construction cost for a 60–kW powerplant, as described above, is $1,250,000 based on January 1986 price levels.

Detailed Study

A detailed study is needed to determine the technical, economic, and environmental feasibility of additional power at Lewiston Dam. Of particular signficance in such a study will be the uncertainty of what the water releases from the dam will be after September 30, 1996, when the evalution period ends.

The scope of the study will be determined by Reclamation, Western, and the non-Federal entity.

Financing Proposals

There are several options under which entities could participate. Funds for studying, designing, and constructing the additional generating facilities would be made available to the United States under provisions of the Contributed Funds Act (41 Stat. 1404). The United States would use the funds for the detailed study, the design, and the construction of the powerplant and associated transmission facilities. Reimbursement of past study costs may be required. Marketing expenses would also be met with contributed funds. Constructed facilities would be owned and operated by the United States as a feature of the CVP. Contributors of non-Federal funds will be compensated under the terms of the options.

The increased downstream releases in the Triunity River cause a considerable loss in CVP power generation due to the reduced transbasin diversions to the Carr, Spring Creek, and Keswick Powerplants. Under the first option, the power would be returned to the CVP for project use needs and sales to existing preference customers. The following options are presented in priority order of preference:

Option A: Loan Arrangement: This option is a loan arrangement between the United States and the entity who loans the money for the financing of the project. The financing entity would receive, in return, repayment of its capital investment plus reasonable costs of financing. No entitlement to power or vested interest in the additional power facilities would be given to the entity. Power generated and transmitted through these facilities would be considered CVP power and used for CVP project use purposes and sales to preference customers.

Option B: Lewiston Allocation: Under this option, the financing entity would receive for its investment, an allotment of the additonal power generated at Lewiston Dam. The entity would enter into a power sales contract with Western. The cost of such power would be based solely on the operation and maintenance costs of the facility for the term of the contract. The entity would receive its power at Lewiston or some other point of delivery as agreed by Western, the contractor, and any wheeling agent(s) involved.

Option C. CVP Allocation: Under this option, the additional power generated by the new facility would be blended in with existing CVP power and the financing entity would receive an allotment of CVP power at CVP rates. A billing credit for the entity's investments would be appropriate under this option.

Proposed Selection Criteria for Financing Entity

Reclamation and Western propose to utilize the following criteria in selecting the entity which will finance the additional power facilities at Lewiston Dam:

A. General Selection Criterion

The financing entity must demonstrate its ability to provide funds for the additional power facilities. More than one entity may be chosen under Option A. An entity's cost of financing may be a factor in the selection process.

B. Option A Selection Criterion

Consideration will be given to all parties including:

1. Entities identified as "preference entities" under Reclamation Law and pertinent statutes, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485(c)).

2. Entities which are corporations or private financing institutions.

3. Private individuals.

C. Options B and C Selection Criterion

1. A single entity will be selected if either Option B or C is chosen.

Reason: The maximum annual energy generated from the additional power development (600-kW) project would only amount to approximately 5,000,000 kWh. This additional resource should not be diluted through an allocation to more than one entity.

2. Priority will be given to a "preference entity" under Reclamation Law.

3. Greater consideration will be given to entities who do not have a Federal power allocation.

Reason: Western's allocation of power to those eligible entities who are not currently customers of Western allows for the most widespread use of its power and is in agreement with the intent of Reclamation Law.

4. Greater consideration will be given to those entities where the allocation would be expected to produce significant benefits in the area of economic and rate relief.

Reason: It is Western's intent to allocate additional Lewiston power to an entity which would be expected to put such an allocation to the most beneficial use. Evidence or expectation of economic and/or rate relief and direct indications of such beneficial use.

Notice of Call for Comments and Proposals

Interested parties are requested to provide Comments and Financing Proposals or submit any other recommended Financing Options by the date and to the address specified in the "Dates and Addresses" section of this notice.

Proposals are to be submitted with a cover sheet as follows:

Bureau of Reclamation

Mid-Pacific Region

Proposal for—

Financial Additional Power Facilities at Lewiston Dam

Name of Organization: _____
Official Contact Person: _____
Address: _____
Phone: _____

The following to be completed by Reclamation:

Date Received: _____
Time: _____
Signed: _____
Title: _____

A typed original and five copies, with the cover sheet as specified previously, should be submitted. No special binding is required.

Availability of Information

All brochures, studies, comments, letters, memoranda, and other documents made or kept by Reclamation or Western pursuant to this notice will be available for inspection and copying at their respective offices.

Dated: July 29, 1986.

C. Dale Duvall,

Commissioner, Bureau of Reclamation.

WM. H. Clagett,I04Administrator, Western Area Power Administration.

August 7, 1986.

[FR Doc. 86-18428 Filed 8-14-86; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Decision; Greyhound Corp.

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register**. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2 (d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying application shall stand denied.

MC-F-17624, filed July 11, 1986. The Greyhound Corporation (Greyhound) (111 West Clarendon, Phoenix, AZ 85077)—Control—Kerrville Bus Company, Inc. (Kerrville) (P.O. Box 712, 429 Sidney Baker Street, Kerrville, TX 78028). Representative: R.D. Rierson, Commerce Attorney, 1724 Greyhound Tower, Phoenix, AZ 85077. Noncarrier Greyhound seeks authority to acquire control through stock purchase, of motor common carrier of passengers Kerrville (MC-27530). Noncarrier the Hal and Charlie Peterson Foundation holds 60 percent of the common stock and 50 percent of the preferred stock of Kerrville, and Kerrville holds the remaining 50 percent of its preferred stock. Greyhound proposes to purchase all such stock. Its subsidiary, Greyhound Lines, Inc., (Lines) (MC-1515), also of Phoenix, now holds the remaining 40 percent of Kerrville's common stock.

In addition to Lines, Greyhound controls Vermont Transit Company, Inc. (MC-45626 and MC-133421), of Burlington, VT, and Texas, New Mexico & Oklahoma Coaches, Inc. of Lubbock, TX. Control of the three carriers was approved in MC-F-8531, MC-F-12432, and MC-F-8343, respectively.

Decided: August 7, 1986.

By the Commission, Motor Carrier Board, Members Thomas, Barnes, and Hartley. Member Hartley not participating.

Noreta R. McGee,

Secretary.

[FR Doc. 86-18440 Filed 8-14-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30869]

Chicago, West Pullman & Southern Railroad Co.; Exemption; Acquisition and Operation

Chicago, West Pullman & Southern Railroad Company (CWP) has filed a notice of exemption to acquire and operate a 5.13-mile line in Cuyahoga County, OH formerly owned and operated by The Newburgh and South Shore Railway Company between valuation station 0+00 and station 316+85.9, but excluding a 2.2-mile portion between stations 25+49.7 and 140+05. Any comments must be filed with the Commission and served on: Chandler L. van Orman, Wheeler & Wheeler, 1729 H Street NW., Suite 200, Washington, DC 20006, (202) 337-6500.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: August 6, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-18197 Filed 8-14-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-19 (Sub-No. 112)]

Baltimore and Ohio Railroad Co., et al.; Abandonment of the Georgetown Subdivision Rail Line Between Montgomery County, MD and Georgetown, District of Columbia

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final scope of study for environmental impact statement.

SUMMARY: This notice presents a final scope of study, prepared in response to written comments and oral presentations at a public meeting, for the environmental impact statement

being prepared for the above-referenced proceeding. Written comments on the final scope are not solicited but will be accepted.

DATE: Written comments on the final scope of work must be received no later than September 15, 1986.

ADDRESS: Interstate Commerce Commission, Section of Energy and Environment, Room 3115, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Robert Maestro, (202) 275–7918.

SUPPLEMENTARY INFORMATION: On April 9, 1986, the Baltimore and Ohio Railroad Co., Metropolitan Southern Railroad Co., and Washington and Western Maryland Railway Co. filed an application with the Interstate Commerce Commission (ICC) seeking a license authorizing abandonment and discontinuance of service of the Georgetown Subdivision rail line, which extends from near Georgetown Junction, Maryland, through Bethesda, Maryland, to its terminus in Georgetown, District of Columbia.[1] Upon abandonment, rail operations will cease, rails, ties and bridges will be salvaged, and the right-of-way will be disposed of. Additionally, traffic previously handled by rail will be moved, for at least part of the haul, by an alternate transportation mode.

On June 3, 1986, a notice of intent to prepare an environmental impact statement (EIS) for the abandonment proceeding was published [51 FR 20558]. The notice presented a preliminary scope of study for the EIS and requested comments in writing or orally at a public scoping meeting which was held subsequently on June 18, 1986. Over 50 parties commented in response to the notice. In accordance with the ICC's environmental rules (49 CFR 1105.8(b)) the final scope of study is presented below.

Introduction

Abandonment of rail lines is characterized by an intent to discontinue transportation service over the line and enables the railroad to remove the track and dispose of the land.[2] Each of these components of the abandonment process gives rise to a specific type of impact-generating activity. These activities include alternate transportation, rail line salvage, and land disposal, each of which will be treated separately in our report. Because each of these activities has the potential to affect historic and archaeological resources, historic preservation issues also will be treated separately.

Alternate Transportation

Since the Georgetown Subdivision was embargoed on May 10, 1985, coal has been transported to the hearing facility by truck. We anticipate that coal will continue to be shipped to the heating facility by trucks following abandonment. The present truck route, along New York Avenue and K Street, will also be assumed to continue as the routing of choice.

Environmental effects associated with increased truck traffic include increases in noise, air emissions and vibrations to adjacent residential and commercial areas and historic properties, safety, traffic congestion, and the physical integrity of road surfaces and bridges. Our evaluation of effects associated with increased truck traffic will be based on theoretical treatment using recent traffic counts provided by the District of Columbia Department of Public Works. Available information suggests that there is a limited number of residential areas that would be involved in this examination.

Alternatives to truck transport of coal will be considered. Alternatives might include greater reliance by GSA on other, interconnected heating plants, delivery of coal by barge, and alternate truck routings.

Rail Line Salvage

Salvage of the rail line has the potential to affect wildlife and wildlife habitats, historic and archaeological resources, the physical integrity of the C&O Canal, and other areas, including water quality. With the possible exception of effects on historic and archaeological resources, however, the effects, particularly long-term effects, of rail line salvage are avoidable or almost completely mitigable. The extent to which other permitting requirements (e.g., permitting under the Federal Water Pollution Control Act) may apply to rail line salvage in this case is unknown at this time, but will be examined.

Land Disposal

There are a variety of statutory schemes that may apply to disposal of the rail line or the right-of-way, once abandoned. These include, in order to priority, (1) the provisions of 49 U.S.C. 10905, pertaining to the subsidization or acquisition of the rail line, (2) section 8(d) of the National Trails System Act, and (3) the provisions of 49 U.S.C. 10906, pertaining to public use of the right-of-way upon abandonment.

To date, considerable interest has been expressed in acquiring either the operational rail line or all or segments of the right-of-way upon abandonment. Proposed uses include parkland, a hiking/biking trail, a commuter transitway, excursion train operations, a highway, a "rolling museum", and finally, private development. With the exception of proposals for private development, each of the proposed uses to which the right-of-way may be put is susceptable to consideration under one or more of the aforementioned statutory schemes. Even in the case of private development, however, some restrictions (e.g., land use plans and policies and zoning ordinances) would probably apply. In any event, each of the proposed uses will be given appropriate consideration in the environmental document.

Historic/Archaeological Considerations

In accordance with section 106 of the National Historic Preservation Act (NHPA), evaluation of effects on historic/archaeological resources will be undertaken. To facilitate full compliance with the objectives of NHPA, in those cases where eligibility for listing in the *National Register* is questionable, we will assume eligibility. Furthermore, historic resources of local interest, such as those identified by the Joint Committee on Landmarks of the National Capital will also be deemed eligible for listing in the *National Register*.

Since there is a high probability that significant archaeological resources are located within the railroad right-of-way, a survey will be conducted to define their locations and determine their significance relative to criteria for listing in the *National Register*. The archaeological survey will be conducted pursuant to applicable guidelines. The evaluation of effects on cultural resources from movement of the trucks will be undertaken, but limited to historic properties only. Although archaeological resources may exist along the truck route, we believe it is impractical to consider them in the context of this evaluation.

Salvage activities will be evaluated for their effect on the historic integrity of the rail line and its bridges (which we assume are eligible for listing in the *National Register*) and impacts to archaeological resources from movement of heavy equipment (e.g., cranes and loaded trucks) within the right-of-way. Additionally, because the right-of-way forms part of the embankment of the C&O Canal, post-abandonment maintenance of the right-

[1] Abandonment and discontinuance of service of common carrier rail lines is governed by ICC regulations at 49 CFR Part 1152.

[2] *See Illinois Commerce Commission* v. *Interstate Commerce Commission*, 787 F.2d 618, 620 and n.1 (D.C. Cir. 1986).

of-way will be addressed relative to the physical integrity of this historic property. Effects on adjacent historic resources from alternate uses of the right-of-way also will be considered, with particularly attention given to the C&O Canal National Historical Park due to its proximity to the right-of-way and its special designation as a National Historic Landmark.

Upon completion of the draft EIS, a notice of its availability will be published in the Federal Register and served on all parties to the proceeding. The notice will also prescribe a comment period. A final EIS, prepared in response to comments received, will be issued subsequently.

Noreta R. McGee,

Secretary.

[FR Doc. 86-18394 Filed 8-14-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application; Arenol Chemical Corp.

Pursuant to section 1008 of the Conrolled Substance Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 22, 1986, Arenol Chemical Corporation, 40-33 23rd Street, Long Island City, New York 11101, made application to the Drug Enforcement Administration to be registered as an importer of Phenylacetone (8501) a basic class of controlled substance in Schedule II.

As to the basic class of controlled substance listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed in 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 15, 1986.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1985), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Dated: August 8, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-18445 Filed 8-14-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Chemical Corp.

Pursuant to § 1301.43(a) to Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 22, 1986, Arenol Chemical Corporation, 40-33 23rd Street, Long Island City, New York 11101, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100)	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justic, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 15 , 1986.

Dated: August 08, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. 86-18446 Filed 8-14-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-28]

Vernon D. Clausing, D.O., Seattle, WA; Hearing

Notice is hereby given that on March 24, 1986, the Drug Enforcement Administration, Department of Justice, issued to Vernon D. Clausing, D.O., an Order To Show Cause as to why the Drug Enforcement Administration should not deny his application for registration in Schedules VI and V, executed on September 25, 1985, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, noitice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, August 26, 1986, in Courtroom No. 2866, 28th Floor, Federal Building, 915 Second Avenue, Seattle, Washington.

Dated: August 8, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-18447 Filed 8-14-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-45]

Patrick J. Frank, M.D., Lebanon, PA; Hearing

Notice is hereby given that on May 1, 1986, the Drug Enforcement Administration, Department of Justice, issued to Patrick J. Frank, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke its DEA Certification of Registration AF2342210, and deny his pending application, executed on September 16, 1985, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for

a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Thursday, September 11, 1986, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place NW., Washington DC.

Dated: August 8, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-18448 Filed 8-14-86; 8:45 am]

BILLING CODE 4410-09-M

John Johnston Jones, Jr., M.D.; Revocation of Registration; Denial of Pending Applications for Renewal

On May 13, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to John Johnston Jones, Jr., M.D., of 806 Bayou Lane, P.O. Box 1447, Thibodaux, Louisiana 70301. The Order to Show Cause sought to revoke DEA Certificate of Registration, AJ6922391, previously issued to Dr. Jones, and to deny any pending applications for renewal. The statutory bases for seeking the revocation and denial are: (1) Dr. Jones' medical license is suspended in the State of Louisiana; thus, he is not authorized to handle controlled substances in that state, and (2) Dr. Jones' registration is inconsistent with the public interest, based primarily on his conviction on three counts of making false representations for payments under Medicare, in violation of 18 U.S.C. 1341 and 42 U.S.C. 1395nn(a)(i).

The Order to Show Cause was sent to Dr. Jones by registered mail and was received by him on May 16, 1986. Dr. Jones did not request a hearing in this matter. Instead, he attempted to surrender his registration to the DEA New Orleans Field Division for a temporary period of time. Since Dr. Jones did not request a hearing on the issues raised in the Order to Show Cause, the Administrator concludes that Dr. Jones has waived his opportunity for a hearing in this matter, and enters this final order based upon the record as it appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that on September 18, 1985, the Louisiana State Board of Medical Examiners suspended Dr. Jones' license to practice medicine in that state for a period of two years. As a result of the suspension of Dr. Jones' medical license, he is not authorized to handle controlled substances in the State of Louisiana during the suspension period.

The Administrator has consistently held that when a DEA registrant is not authorized to handle controlled substances in the state in which he practices, DEA is without lawful authority to maintain his registration. See *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208 (1985); *Kenneth K. Birchard, M.D.*, 48 FR 33778 (1983); and *Thomas E. Woodson, D.O.*, Docket No. 81-4, 47 FR 1353 (1982). Therefore, since Dr. Jones is not currently authorized to handle controlled substances in the State of Louisiana, the Administrator cannot maintain his DEA Certificate of Registration in that state.

Dr. Jones' lack of state authority to handle controlled substances, by itself, is sufficient to warrant the revocation of his current DEA Certificate of Registration, and for the denial of any pending applications for renewal. Consequently, the Administrator finds no need to address the public interest issue raised in the Order to Show Cause. The other matter can be considered in the course of a subsequent proceeding, in the event that Dr. Jones applies for a DEA registration in the future. The Administrator concludes that Dr. Jones' current DEA Certificate of Registration should be revoked, and any pending applications for renewal should be denied, based solely on Dr. Jones' lack of state authorization to handle controlled substances.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), orders that DEA Certificate of Registration AJ6922391, previously issued to John Johnston Jones, Jr., M.D., be, and it hereby is, revoked; it is further ordered that any pending applications for renewal, executed by Dr. Jones, be, and they hereby are, denied.

This order is effective August 15, 1986.

Dated: August 11, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-18449 Filed 8-14-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 86-43]

Lannett Co.; Philadelphia, PA; Hearing

Notice is hereby given that on April 24, 1986, the Drug Enforcement Administration, Department of Justice, issued to the Lannett Company, an Order To Show Cause as to why the Drug Enforcement Administration should not revoke its DEA Certification of Registration PL0029024 and PT0160159.

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 am on Tuesday, September 9, 1986, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place NW., Washington, DC.

Dated: August 8, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-18450 Filed 8-14-86; 8:45 am]

BILLING CODE 4410-09-M

Lorimer Pangilinan, M.D.; Denial of Application

On March 24, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lorimer Pangilinan, M.D., of 209 South Main Street, Ridgely, Tennessee 38080. The Order to Show Cause sought to deny the application for DEA Registration executed by Dr. Pangilinan on May 13, 1985. The statutory predicate for the Order to Show Cause was that: (1) Dr. Pangilinan is not currently licensed by the Tennessee Board of Medical Examiners to practice medicine, and consequently, he is no longer authorized to handle controlled substances in the State of Tennessee; (2) On January 17, 1986, in the United States District Court for the Western District of Tennessee, Dr. Pangilinan entered pleas of guilty, to fifteen counts of distribution of controlled substances, in violation of Title 21 U.S.C. 814(a)(1); (3) On January 17, 1986, in the United States District Court for the Western District of Tennessee, Dr. Pangilinan entered pleas of guilty to fifteen counts of using an expired DEA registration number to obtain or acquire controlled substances, in violation of Title 21 U.S.C. 843(a)(2); and (4) On January 22, 1986, in the Gibson County Circuit Court in Tennessee, Dr. Pangilinan entered a plea of guilty to the second degree murder of a former patient, whose death was found to be directly caused by Dr. Pangilinan's overprescription of numerous controlled substances.

The Order to Show Cause was sent registered mail, return receipt requested, to the address at which Dr. Pangilinan applied for registration. The return receipt received by DEA indicates that

the Order to Show Cause was received and signed for on March 28, 1986. Dr. Pangilinan has yet to respond to the Order to Show Cause. Since Dr. Pangilinan's time for requesting a hearing on the matters raised in the Order to Show Cause has long expired, the Administrator concludes that he has waived his opportunity for a hearing in this matter. Therefore, the Administrator issues this final order based upon the information contained in the investigative file. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that on May 21, 1985, the Tennessee Department of Health and Environment, Board of Medical Examiners, summarily suspended Dr. Pangilinan's license to practice medicine in the State of Tennessee. The Board of Medical Examiners based its suspension on a number of factors. It noted that Dr. Pangilinan had been charged with the second degree murder of a former patient by inappropriately prescribing controlled substances. In addition, the Board determined that Dr. Pangilinan's prescribing habits for controlled substances were improper. It also noted that Dr. Pangilinan had prescribed large quantities of controlled substances without possessing a valid DEA Certificate of Registration. Further, the Board ordered Dr. Pangilinan to undergo a psychiatric examination, the results of which indicated that he is a manic-depressive individual who is unable to safely engage in the practice of medicine. Following the summary suspension of Dr. Pangilinan's license to practice medicine, the Board of Medical Examiners revoked his license in a default order issued on August 12, 1985.

As a result of the revocation of Dr. Pangilinan's license to practice medicine, he is no longer authorized to handle controlled substances in the State of Tennessee. Since he lacks the authority to handle controlled substances in Tennessee, the Administrator is without authority to approve Dr. Pangilinan's application for registration. DEA has consistently held that the Administrator cannot approve an application for registration unless the applicant is duly licensed and authorized to handle controlled substances in the State in which he is seeking registration. See *Emerson Emory, M.D.*, Docket No. 85-46, 51 FR 9543 (1986), *Marshall S. Tuck, M.D.*, Docket No. 80-28, 45 FR 85845 (1980). Therefore, based solely on Dr. Pangilinan's lack of state authorization to handle controlled substances, the Administrator must deny his application for registration.

In addition to the revocation of his state license, Dr. Pangilinan has been convicted of several felony offenses relating to controlled substances. The Administrator finds that Dr. Pangilinan pleaded guilty and was convicted on April 4, 1986, in the United States District Court of Western Tennessee, of fifteen counts of distribution of controlled substances, in violation of Title 21 U.S.C. 841(a)(1), and fifteen counts of using an expired DEA registration number to obtain or acquire controlled substances, in violation of Title 21 U.S.C. 843(a)(3). Further, Dr. Pangilinan pleaded guilty on January 22, 1986 to the second degree murder of a former patient, whose death was determined to be caused by the doctor's intentional overprescription of controlled substances. All of the above offenses constitute felony offenses relating to controlled substances.

In making his decision to approve or deny a practitioner's application for registration, the Administrator must consider whether the practitioner's registration would be consistent with the public interest. Title 21 U.S.C. 823(f). The factors the Administrator must consider in making such a decision are:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. Title 21 U.S.C. 823(f).

Based on the five criteria listed above, the Administrator finds, without hesitation, that Dr. Pangilinan's registration would be inconsistent with the public interest. First, by revoking his medical license, the Tennessee Board of Medical Examiners has indicated that it does not recommend and will not allow Dr. Pangilinan to handle controlled substances in the State of Tennessee. Second, Dr. Pangilinan's multitude of felony offenses relating to controlled substances strongly persuade the Administrator that he has a flagrant disregard for both State and Federal controlled substance laws. Finally, the evidence of Dr. Pangilinan's controlled substance convictions, the catastrophic consequences of his prescribing habits and the results of his psychiatric examination indicate that he poses a serious threat to the public health and safety of the community when allowed to handle controlled substances. Consequently, the Administrator finds that the approval of Dr. Pangilinan's application for registration would be wholly inconsistent with the public interest.

Accordingly, since Dr. Pangilinan is not authorized to handle controlled substances in the State in which he seeks registration, and further, that since his registration would be inconsistent with the public interest, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by Title 21 U.S.C. 823 and 28 CFR 0.100(b) orders that the application for a DEA Certificate of Registration, executed by Lorimer Pangilinan, M.D. on May 13, 1985, and any other outstanding applications for DEA registration executed by Dr. Pangilinan, be, and they hereby are, denied.

This order is effective August 15, 1986.

Dated: August 11, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-18451 Filed 8-14-86; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Withdrawal; Sigma Chemical Co.

On July 2, 1986, the Drug Enforcement Administration (DEA) published a Notice of Application in the **Federal Register** (Vol. 51, No. 127, pg. 24241) stating that Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, had submitted an application for registration as a importer of Noroxymorphone (9668), a basic class of controlled substance in Schedule II.

On July 15, 1986, the DEA was advised that Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, wishes to withdraw its application for registration as a importer of Noroxymorphone (9668).

The application having been withdrawn, any proceedings relating to the application have been terminated and the publication withdrawn.

Dated: August 12, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-18469 Filed 8-14-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: September 9, 1986, 9:30 am, Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523–6565.

Signed at Washington, DC, this 7th day of August 1986.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 86–18511 Filed 8–14–86; 8:45 am]

BILLING CODE 4510–28–M

Task Force on Economic Adjustment and Worker Dislocation; Cancellation of Meeting

Notice is hereby given that the Task Force on Economic Adjustment and Worker Dislocation has canceled its fourth scheduled meeting set for Wednesday, August 20, 1986, Room C–5515, Seminar Room 6, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of the August 20, 1986 meeting was published August 7, 1986 in 51 FR 28462.

Task Force member scheduling conflicts have precluded meeting at this time. A date for the next meeting will be published in September.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Holmes, U.S. Department of Labor, Room S–5014, Washington, DC 20210, (202) 523–7571.

Signed at Washington, DC, this Monday of August 11, 1986.

Michael E. Baroody,

Assistant Secretary for Policy.

[FR Doc. 86–18510 Filed 8–14–86; 8:45 am]

BILLING CODE 4510–23–M

Office of the Secretary

State of Washington Employment Security Deparment; Hearing

This notice announces an opportunity for a hearing for the State of Washington Employment Security Department pursuant to section 3303(b)(3) of the Internal Revenue Code of 1954, 26 U.S.C. 3303(b)(3), and 20 CFR 601.5, to be held at 9:30 o'clock in the morning on September 10, 1986, in a courtroom in the Vanguard Building, 1111 20th Street, NW., Washington, DC. The State agency will have an opportunity to make a record.

The hearing will be held on the following issue:

Issue: Whether, with respect to certification of State laws on October 31, 1986, under section 3302(b) of the Internal Revenue Code of 1954, 26 U.S.C. 3303(b), the law of the State of Washington fails to conform with the Federal law requirements of section 3303(a)(1) of the Internal Revenue Code of 1954, 26 U.S.C. 3303(a)(1), with respect to the 12-month period ending on such October 31.

Basic of Issue: Section 3303(a)(1) of the Internal Revenue Code of 1954 provides:

(a) State Standards.—A taxpayer shall be allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law–

(1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date.

This provision has been consistently interpreted to require that a State law must rate all employers entitled to reduced rates on the basis of their experience during the same specified period with the same single factor (or combination of factors which taken together constitute a single factor) bearing a direct relation to unemployment risk. Further, under a State law that measures experience based on benefit charges, a single rule of charging benefits applicable to all chargeable employers is essential to assure that the State's experience rating plan measures the "experience" of each employer relative to the experience of all other employers.

Section 50.29.022(1) and (2) of the Washington Employment Security Act provides:

(1) For the purpose of establishing an employer's rate of contribution for the tax year beginning January 1, 1985, the department shall calculate a percentage rate of savings for benefit charges for the fiscal year ending June 30, 1985 and apply the rate as though RCW 50.29.020(2)(g) had been in effect for fiscal years 1984, 1983, 1982, and 1981. For fiscal years ending June 30, 1986, and beyond, benefit charges will be calculated pursuant to RCW 50.29.020(2)(g).

(2) For the purpose of establishing an employer's rate of contribution for the tax year beginning January 1, 1986, the department shall calculate the percentage rate of savings for benefit charges for the fiscal year ending 1985, and apply the rate to fiscal years 1984, 1983, and 1982.

Section 50.29.020(2)(g) of the Washington Employment Security Act provides:

In the case of individuals identified under RCW 50.20.015, benefits paid with respect to a calendar quarter, which exceed the total amount of wages earned in the state of Washington in the higher of two corresponding calendar quarters included within the individual's determination period, as defined in RCW 50.20.015, shall not be charged to the experience rating account of any contribution paying employer.

Under Washington's experience rating system, the factor used to measure experience is benefits paid during the four-year period immediately preceding the computation date. In 1985, the State of Washington enacted section 50.29.022 which relieved employers from certain benefit charges for 1985, as set out above in RCW 50.29.022(1). In order to allow these employers to receive a reduced rate immediately, the legislation also allowed these employers to project their one-year savins from noncharging to each of the four preceding years. For the 1986 tax year, these savings were applied to each of the four years on which employers's reduced rates were calcutated. This appears to be inconsistent with the experience rating requirements of section 3303(a)(1) of the Internal Revenue Code of 1954 since the calculation is based upon an assumption of experience rather than actual experience. This adjustment to charges is an unacceptable deviation from Washington's approved charging method because it impairs the reflection of actual experience of employers and distorts the relative measurement of employers' experience, contrary to the requirements of section 3303(a)(1). For the tax (calendar) year 1986, rates were calculated using the same assumed experience for the years 1982, 1983, and 1984, as set forth above in RCW 50.29.022(2).

Authority for Notice of Hearing

This Notice of Hearing is issued pursuant to section 3303(b)(3) of the Internal Revenue Code of 1954, 26 U.S.C. 3303(b)(3) and 20 CFR 601.5. Section 3303(b)(3) of the Internal Revenue Code of 1954 provides:

(3) The Secretary of Labor shall, within 30 days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c), which are allowable under such State law only in accordance with the provisions of subsection (a). After making such findings, the Secretary of Labor shall not withhold his certification to the Secretary of the Treasury of such State law, or of the provisions thereof with respect to which such findings were made, for any 12-month period ending on October 31 pursuant to paragraph (1) or (2) unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) or the State has, with respect to such 12-month period, failed to comply substantially with any such provision.

Section 601.5 of Title 20, Code of Federal Regulations (30 FR 6942, May 22, 1965) provides in part:

§ 601.5. Withholding payments and certifications.

(a) *When withheld.* Payment of funds to States or yearend certification of State laws, or both, are withheld when the Secretary [of Labor] finds, after reasonable notice and opportunity for hearing:

* * * * *

(2) That the State unemployment compensation law has been so changed as no longer to meet the conditions required by section 3303(a) of the Internal Revenue Code of 1954 (section 3303(b)(3) of the Internal Revenue Code); . . .

* * * * *

These Proceedings

Following the hearing a decision will be made by the Secretary of Labor which will have a bearing on whether the Washington law is certifiable on October 31, 1986, with respect to additional tax credits allowable under a certification to the State's employers pursuant to subsection (b) of section 3302 of the Internal Revenue Code of 1954, 26 U.S.C. 3302(b), for the taxable year 1986.

The proceedings in this matter shall be in accordance with the Rules of Procedure accompanying this notice.

For purposes of this hearing, all motions, briefs, and other papers shall be filed, pursuant to the above referenced Rules of Procedure, with the presiding Administrative Law Judge, U.S. Department of Labor, Suite 700, Vanguard Building, 1111 20th Street, NW., Washington, DC 20036, who will be designated in accordance with the Rules of Procedure.

Counsel for the Washington Employment Security Department shall enter an appearance with the presiding Administrative Law Judge no later than August 19, 1986; a copy shall be provided to Charles D. Raymond, Acting Associate Solicitor for Employment and Training, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, as expeditiously as possible.

Counsel for the U.S. Department of Labor shall enter an appearance with the presiding Administrative Law Judge no later than August 19, 1986, a copy shall be provided to the Washington Employment Security Department as expeditiously as possible.

Signed at Washington, DC, on July 28, 1986.

William E. Brock,

Secretary of Labor.

DEPARTMENT OF LABOR

Office of the Secretary

Rules of Procedure

1. An Administrative Law Judge will be designated by the Chief Administrative Law Judge, United States Department of Labor, to preside over the hearing and perform the functions required by these Rules.

2. The parties of record shall be the State agency (as defined in 26 U.S.C. 3306(e)) named in the Notice of Hearing and the U.S. Department of Labor.

3. Any non-party State agency, individual worker, employer, organization, association of workers or employers, or member of the public, asserting an interest in the proceedings, may be permitted by the presiding Administrative Law Judge, upon motion granted, to participate in the hearing as amicus curiae only. Participation by any such amicus curiae shall be limited to the submittal of such briefs as may be directed by the presiding Administrative Law Judge. All motions contemplated by this Rule shall be filed with the presiding Administrative Law Judge no later than two (2) days prior to the scheduled hearing, and shall be served upon and received by the counsel for each party prior to the hearing. The presiding Administrative Law Judge shall rule on all such motions and inform the applicants and the parties of the rulings prior to the hearing or at the beginning of the hearing.

4. The presiding Administrative Law Judge may issue an appropriate prehearing order governing all issues to be raised in the proceedings, and designation of evidence to be offered at the hearing.

5. The hearing will be conducted in an informal but orderly and expeditious manner. The presiding Administrative Law Judge will regulate all matters pertaining to the course and conduct of the proceedings, and may grant extensions of time regarding the submission of briefs and other papers, and may reschedule the hearing for another time or date for good cause shown.

6. Upon the commencement of the hearing, the U.S. Department of Labor will be offered an opportunity to make an opening statement as to the nature of the hearing and the matters in issue. The State agency shall then be offered a similar opportunity to make an opening statement.

7. The order of the presentation of evidence will be as follows:

(a) The U.S. Department of Labor will proceed first by presenting any evidence it may wish to offer which is relevant to the issue specified in the Notice of Hearing.

(b) The State agency will proceed next to present any evidence it may wish to offer which is relevant to the issue referred to in Rule 7(a) above, followed by any evidence relevant to any additional issue, except that evidence regarding any issue other than the issue referred to in the Notice of Hearing may be admitted only if the party offering such evidence has provided notice of such issue and a summary of such evidence, including a copy of any document to be offered, to each opposing party of record, at least three business days prior to the hearing.

(c) The U.S. Department of Labor may next present relevant evidence in rebuttal on any issue, and the trial record shall thereafter be closed, except as provided for by Rule 9 below.

8. Technical rules of evidence shall not apply to the hearing. The presiding Administrative Law Judge will rule upon offers of proof and the admissibility of evidence, and may exclude irrelevant, immaterial, or unduly repetitious evidence or any other evidence excludable under these Rules, and may examine witnesses. All writings, charts, tabulations, and similar data offered in evidence at the hearing shall, upon a satisfactory showing of their authenticity, relevancy, materiality, and admissibility under these Rules, be received in evidence.

9. During the hearing, the presiding Administrative Law Judge may require the production and introduction of further evidence upon any relevant matter, and may provide for the later receipt of such evidence or any other evidence for the record.

10. The proceedings at the hearing shall be recorded verbatim. The original and one copy of the transcript of the record of the hearing shall be furnished to the presiding Administrative Law Judge. The parties of record and any amicus curiae shall be entitled to secure a copy of the transcript from the reporter upon such terms as the party or amicus may arrange.

11. When any document is offered in evidence, one additional copy thereof shall be furnished to the presiding Administrative Law Judge and, unless previously provided, a copy shall be furnished to each opposing party of record.

12. (a) At the conclusion of the receipt of evidence, the presiding Administrative Law Judge shall hear oral arguments presented by the parties of record.

(b) Oral arguments shall be in the following order: Opening argument for the U.S. Department of Labor, unless waived; argument for the State agency, unless waived; and closing argument for the U.S. Department of Labor, unless waived.

13. The parties of record and any amicus curiae authorized to participate in the proceedings shall be permitted to file briefs. The parties of record may also file reply briefs and proposed findings of fact and conclusions of law on the matters in issue. All such briefs and other papers shall be filed with the presiding Administrative Law Judge, with proof of service upon the parties, within such time periods as are established by the presiding Administrative Law Judge.

14. As soon as possible, but in no event later than October 10, 1986, the presiding Administrative Law Judge shall: (1) Prepare a recommended decision on the basis of the record containing recommended findings of fact and conclusions of law on all issues raised by the parties; (2) certify to the Secretary of Labor such recommended decision and the entire record of the proceedings; and (3) forward a copy of the recommended decision to each party of record and amicus curiae.

15. Any party of record may file with the Secretary of Labor a Statement of Exceptions, with proof of service, setting forth any exceptions thay may have to the recommended decision, within seven (7) days after service by mail of the recommended decision. In the absence of timely filing and sufficient proof of service on other parties, a Statement of Exceptions filed by a party shall not be considered by the Secretary of Labor in making his decision.

16. (a) Any briefs or other papers intended to be filed of record in the proceedings shall be mailed or otherwise delivered to the office of the presiding Administrative Law Judge. Unless otherwise ordered, such documents shall be deemed to be filed on the date they are postmarked if transmitted by the United States Postal Service, and shall be deemed to be filed on the date received if transmitted by any other means.

(b) An original and one copy of any brief or other paper shall be filed with the presiding Administrative Law Judge and shall be accepted subject to timely filing with proof of sufficient service upon the parties.

(c) If the last day of a time limit prescribed by these Rules or established by the presiding Administrative Law Judge falls on a Saturday, Sunday, or a Federal holiday, the time limit shall be extended to the next official business day.

17. Following the certification in accordance with Rule 14 above, and consideration of any Statement of Exceptions filed and served in accordance with Rules 15 and 16, the Secretary of Labor shall render a decision in the matter, in writing, and shall forward the decision together with the record to the Chief Administrative Law Judge, and shall forward copies of his decision to the Governor of the State, to each party of record, and to any amicus curiae authorized to participate in the proceedings.

[FR Doc. 86-18509 Filed 8-14-86; 8:45 am]
BILLING CODE 4510-30-M

Employment and Training Administration

Job Training Partnership Act; Indian and Native American Employment and Training Programs; Final Designation Procedures

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of final designation procedures for grantees.

SUMMARY: This document contains final procedures by which the Department of Labor will designate grantees for Indian and Native American Employment and Training Programs under the Job Training Partnership Act. The next cycle of such designation actions will cover JTPA Program Years 1987 and 1988 (July 1, 1987, through June 30, 1989). This notice provides necessary information to prospective grant applicants to enable them to submit appropriate agrant applicants to enable them to submit appropriate requests for designation.

EFFECTIVE DATE: August 15, 1986.

ADDRESS: Send one originial and two copies of Advance and final Notices of Intent to: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, U.S. Department of Labor, Room N4643, 200 Constitution Ave., NW., Washington, DC 20210, Attention: ANOI/NOI Desk .

SUPPLEMENTARY INFORMATION: Proposed designation procedures for Indian and Native American Employment and Training Programs under section 401 of the Job Training Partnership Act were published in the **Federal Register** on June 20, 1986 (51 FR 22578) for the purpose of soliciting public comment. Eighteen comment letters were received, all from incumbent grantee organizations or representatives of such organizations. Of this number, twelve organizations submitted identical comments.

The following is a summary, by Part, of the comments received and the Department of Labor's (Department's) response. Although the procedures have not been altered from their proposed form (except for address changes), the summary is intended to clarify the issues identified by commentators.

General Designation Principles

Several commentators suggested that Part I—*General Designation Principles*, No. (3), implied that the Department should provide technical assistance to non-designated reservation organizations to re-establish themselves as grantees. They further suggest that the Department give "special consideration" in terms of peformance standards, planning requirements and implementation time frames to those designated to serve such areas.

Because of the limited amount of JTPA technical assistance funds that are available, the Department will continue its practice of utilizing such funds for current grantees. However, if a reservation organization corrects the deficiencies that resulted in its non-designation (e.g., repayment of a debt establsihed by final agency action), it has the opportunity to re-apply and to be considered for its former service area.

As a matter of practice, the Department does, take into account the particular circumstances of grantees who are designated to serve areas previously served by organizations that have failed to meet the responsibility review criteria enumerated at 20 CFR 632.11(d). For example, such grantees are given several options regarding the selection of appropriate performance standards. In terms of implementation

requirements, however, the Department must ensure that eligible Indian and Native American applicants have timely access to program activities when a change in service deliverers occurs.

Some commentators objected to the references to consultation by telephone in Part I—*General Designation Principles*, No. (3). They also objected to the fact that the procedures did not address consultation requirements for off-reservaton situations.

As indicated in the procedures, consultation may be accomplished in writing, in person or by telephone, as time and circumstances permit. In order to meet the regulatory deadline of March 1, 1987 for designation decisions, telephone consultations may sometimes be necessary. Furthermore, consultation requirements cited at 20 CFR 632.10(f) only apply when grantees other than those which are directly controlled by Indian or Native American people are designated.

Advance Notice of Intent (ANOI)

Comments were received objecting to the fact that the submission of an ANOI was not madatory as described in Part II—*Advance Notice of Intent*. Some of these commentators suggested that applicants that did not submit an ANOI, or that applied for more territory in their final Notice of Intent than was indicated in their ANOI, be penalized under the point rating system for competitions.

The regualtions at 20 CFR 632.11(a) only require applicants for designation to submit a final Notice of Intent no later than January 1 of the designation year. The ANOI process is not addressed in the regulations, and cannot be mandated procedurally. Therefore, applicants that fail to submit an ANOI, or that change service area requests in the final submission, should not be penalized. To do otherwise would be contrary to both the regulations and the dictates of fairness.

In view of the foregoing, as noted in Part III—*Notice of Intent*, current grantees, other than tribes, bands or groups (including Alaskan Native entities) requesting their existing areas, are encouraged to consder submitting a full final Notice of Intent even if their service area request has not changed.

One comment was submitted expressing confusion about the approprate use of the Standard Form (SF) 424 in the designation cycle. The SF 424 will no longer be utilized in the ANOI process. However, as requred at 20 CFR 632.11(a) and (c), the SF 424 will continue to be required in the final Notice of Intent process.

Preferential Hierarchy for Determining Designations.

The respondents with identical comments objected to the use of the term "potentially" in reference to the determination of significant superiority overall in Par IV—*Preferential Hierarchy for Determining Designations*, No. (2).

The term "potentially" was added to this section to clarify the respective roles of the Chief, Division of Indian and Native American Programs (DINAP) and the Grant Officer in the designation process. In derermining which position an organization holds in the preferential hierarchy, the Chief, DINAP, only ascertains the potential for significant superiority overall based on the factors enumerated in this Part. The Grant Officer is responsible for the final determination of significant superiority overall, based on all available information, when making designation decisions.

In regard to this Part, comments were also received recommending a return to the use of the five hierarchical categories of the prior cycle. These commentators wanted to ensure that preference would be given to locally-based, Indian or Native American-controlled organizations over Indian or Native American organizations that were not locally-based within an established service area.

These comments suggest confusion regarding the application of the preferential hierarchical principles in the prior designation cycle. The preferential hierarchy permits competition between such organizatons when the potential for significant superiority overall is demonstrated by the new applicant. However, evidence of *local* Indian or Native American organizational support is an integral evaluation factor in the competitive process. It is possible for an organization that is not locally based to be preferred by local Indian or Native American group over a local incumbent grantee that has been a poor performer. As in the prior designation cycle, the award of a grant is based ont the Grant Officer's review of all available information including local community support.

It must be recognized that competition, whenever it exists, is the consequence of eligible organizations, incumbents and non-incumbents, exercising their right to apply for JTPA, Section 401 funds. In deference to that consideration, the designation procedures cannot, as is the intended preference of the commentators, be constructed so that those organizations are denied reasonable and fair opportunity to apply for designation.

Staffing of Preferential Hierarchy Task Force and Review Panel

Several commentators asserted that the proposed procedures failed to implement the requirements of section 401(e) of JTPA relative to the staffing of the task force and the rating panel, if utilized. These procedures are discussed in Part IV—*Preferential Hierarchy for Determining Designations* and Part V—*Use of Panel Review Procedure*.

This assertion is without merit. As in the prior designation cycle, the Department fully intends to include staff having particular competence in Indian and Native American Programs on the task force and the rating panel in the event that these groups are utilized in the designation process.

Notification of Designation/Non-Designation

Several commentators suggested that the Department require that all affected organizations, including the current designee, be advised of appeal actions. Non-designation procedures are addressed in Part VI—*Notification of Designation/Non-Designation*.

In the prior designation cycle, all parties affected by an appeal action were notified by the Department of such proceedings. The Department will continue to implement this procedure in this and future designation cycles.

Special Designation Situations

One comentator objected to the fact that Part VII—*Special Designation Situations*, No. (1), did not expand on the eligibility of Alaskan Native entities relative to designation requirements.

As noted in Part IV—*Preferential Hierarchy for Determining Designations*, it is incumbent on the applying organization to supply sufficient information upon which the determination can be made. Organizations must indicate the category into which they believe they fall and must adequately support that assertion.

Designation Process Glossary

The respondents with identical comments objected to the inclusion of State agencies in the definition in Part VIII—*Designation Process Glossary*, No. (1), of an Indian or Native American-controlled organization. These commentators and others also suggested that there was some inconsistency between this definition and the third level of the preferential hierarchy, relative to units of State or local

government. Some suggested that the distinction between advisory bodies and control by a governing board should be strengthened.

State agencies can qualify as Indian or Native American-controlled organizations as long as they meet the criteria identified in the designation process glossary. The criteria described in Part IV—*Preferential Hierarchy for Determining Designations* made clear that, for designation purposes, a significant Native American advisory process is distinguished from full control by a Native American governing board. Additionally, in order to qualify for the second level of the preferential hierarchy, an organization must be both Indian or Native American-controlled *and* community based, as described in section 4, Definitions of JTPA.

For the above reasons, the procedures for JTPA, section 401 Indian and Native American grantees proposed at 51 FR 22578 (June 20, 1986) are adopted in final for the Program Year 1987–1988 designation cycle. (Addresses identified in the proposed procedures have been changed because of the planned move of Employment and Training Administration personnel to the Frances Perkins Building.)

For the convenience of the public, the procedures are being reprinted below:

TABLE OF CONTENTS

Introduction: Scope and Purpose of Notice
I. General Designation Principles
II. Advance Notice of Intent
III. Notice of Intent
IV. Hierarchy for Determining Designations
V. Use of Panel Review Procedure
VI. Notification of Designation/ Nondesignation
VII. Special Designation Situations
VIII. Designation Process Glossary

Introduction: Scope and Purpose of Notice

Section 401 of the Job Training Partnership Act (JTPA) authorizes programs to serve the job training needs of Indians and Native Americans.

Requirements for these programs are set forth in the JTPA and in the regulations at 20 CFR Part 632. Pursuant to these requirements, the Department of Labor (DOL), through published procedures, selects entities for funding under JTPA section 401, and designates such entities as Native American grantees, contingent on all other grant award requirements being met. This notice describes how DOL plans to make such designation decisions, pursuant to the regulations at 20 CFR Part 632. It provides necessary information to prospective grant applicants to enable them to submit appropriate requests for designation.

The process described in this notice is supported directly by the regulations at 20 CFR Part 632. This notice does not involve additional requirements but simply describes, for all eligible organizations' benefit, the procedures which will be followed in making designation decision.

The amount of JTPA section 401 funds to be awarded to designated Native American grantees is determined under procedures described at 20 CFR 632.171 and not through this designation process. The specific organization eligibility and application requirements for designation are contained at 20 CFR 632.10 and 632.11. Any organization interested in being designated as a Native American grantee must be aware of and comply with these requirements.

I. General Designation Principles

The following general principles, based on the JTPA and applicable regulations, are intrinsic to the designation process:

(1) All applicants for designation must comply with the requirements found at 20 CFR Part 632 regardless of their apparent standing in the preferential hierarchy. The basic eligibility, application and designation requirements are found in Subpart B of those regulations.

(2) The nature of this program is such that Indians and Native Americans in an area are entitled to the program and that they are best served either by a responsible organization directly representing them or by one of their own choosing. JTPA and the governing regulations give clear preference to Native American-controlled organizations. That preference is the basis for the steps which will be followed in designating grantees.

(3) A State or federally recognized tribe, band, or group on its reservation is given absolute preference over any other organization so long as it has the capability to administer the program and meets all regulatory requirements.

This preference applies only to the area within the reservation boundaries. A reservation organization which may have its service area given to another qualified organization for reasons specified in the regulations will be given an opportunity in the future to reestablish itself as the designated grantee, should it so desire.

In the event that such a tribe, band, or group (includiung an Alaskan Native entity) is not designated to serve such groups, the DOL will consult with the governing body of such entities as provided at 20 CFR 632.10(e). Such consultation may be accomplished in writing, in person or by telephone, as time and circumstances permit.

(4) In designating Native American grantees for off-reservation areas, the DOL will provide preference to Indian and Native American-controlled organizations as described in 20 CFR 632.10(f) and as further clarified in this notice.

(5) Special employment and training services for Indian and Native American people have been provided through an established service delivery network for the past twelve years under the authority of JTPA section 401 and section 302 of the expired Comprehensive Employment and Training Act (CETA). The DOL intends to exercise its designation authority in a way that will preserve the continuity of such services and will prevent the undue fragmentation of existing service areas. Consistent with present regulations and other provisions of this notice, this will include preference for those Native American organizations with an existing capability to deliver employment and training services within an established service area. Such preference will be identified through input from the Chief of DOL's Division of Indian and Native American Programs (DINAP) and the Director of DOL's Office of Special Targeted Programs (OSTP) and through the use of the rating system described in this notice. Unless a non-incumbent applicant in the same preferential hierarchy as an incumbent applicant grantee can demonstrate that it is significantly superior overall to the incumbent, the incumbent will be designated, if it otherwise meets all of the requirements for redesignation.

II. Advance Notice of Intent

The purpose of the Advance Notice of Intent process is to provide section 401 applicants, prior to the submission of a final Notice, with information relative to potential competition. While DOL encourages the resolution of competitive requests prior to final submission, the Advance Notice of Intent process also serves to alert those whose differences cannot be resolved of the need to submit a complete final Notice of Intent.

Although the Advance Notice of Intent process is not mandated by the regulations, participation in the advance process by prospective section 401 applicants is strongly recommended. The Advance Notice of Intent process allows the applicant to identify potential competitors, to resolve conflicts if possible, and to prepare a final Notice of Intent with advance knowledge of potential competing requests.

It should be emphasized, however, that the Advance Notice of Intent process does not ensure that all potential competitors have been identified. Some applicants may opt not to submit an Advance Notice of Intent; others may change service area requests in the final submission, despite instructions in Part III., NOTICE OF INTENT, below. Therefore, as noted above, final submission should be prepared with this possibility in mind.

By October 1 of the year preceding a designation year, all organizations interested in being designated as section 401 grantees should submit an original and two copies of an Advance Notice of Intent. An organization may submit only one Advance Notice of Intent for any and all areas for which it wants to be considered. Advance Notices are to be sent to the following address: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, U.S. Department of Labor, 200 Constitution Ave., NW., Room N4643, Washington, DC 20210. ATTENTION: ANOI/NOI Desk.

The Standard Form (SF) 424 will no longer be used for the Advance Notice of Intent process. DOL has designed a new Advance Notice of Intent form which is formatted to capture more precise geographic service area requests and other designation information. This new format will allow DOL to expedite the identification of potentially competitive applicants.

Copies of the new Advance Notice of Intent form, with complete instructions, will be mailed to all current grantees on or about August 15. Incumbent will also receive a copy of their present service area at this time. New applicants may request copies of the Advance Notice of Intent form by writing to: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, U.S. Department of Labor, Patrick Henry Building, 601 D Street, NW., Room 6102, Washington, DC 20213.

The first step in the designation process is to determine which areas have more than one potential applicant for designation. For those areas for which more than one organization submits an Advance Notice of Intent, each such organization will be notified of the situation and will be apprised of the identity of the other organization(s) applying for that area. At this time, it is planned that such notification will consist of providing affected applicants with copies of all Advance Notices of Intent submitted for their areas. The notification will occur on or about November 15. The notification will state that organizations are encouraged to work out any jurisdictional disputes among themselves and to submit a final Notice of Intent by the required postmarked January 1 deadline or withdraw their Advance Notice.

For areas other than reservations, it is DOL policy that, to the extent possible, service areas and the organizations operating in those areas be determined by the community to be served by the program. In the event the Native American community cannot resolve differences, the notification will inform parties that they should take special care with their final Notices of Intent to ensure they are complete and fully responsive to all matters covered by the preferential hierarchy and rating systems discussed in this notice.

Information provided in the Advance Notice of Intent process will not be considered as a final submission as referenced at 20 CFR 632.11.

III. Notice of Intent

All applicants will submit an original and 2 copies of a final Notice of Intent, postmarked no later than January 1, 1987, consistent with the regulations at 20 CFR 632.11. Final Notices of Intent are to be sent to the following address: Mr. Herbert Fellman, Chief, Division of Indian and Native American Programs, U.S. Department of Labor, 200 Constitution Ave., NW., Room N4643, Washington, DC 20210. ATTENTION: ANOI/NOI Desk.

The regulations permit current grantees requesting their existing service areas to submit a Standard Form 424 in lieu of a complete application. As noted earlier in this notice, current grantees, other than tribes, bands or groups (including Alaskan Native entities) requesting their existing areas, are encouraged to consider submitting a full Notice of Intent even if their service area request has not changed.

Although organizations are encouraged to alter their area requests to minimize or avoid overlap with other organizations, they should not add territory to that identified in the Advance Notice of Intent. Unless currently designated for such area, any organization applying on January 1 for noncontiguous areas must prepare a separate, complete Notice of Intent for each such area.

It is the DOL's policy that no information affecting the panel review process (see Part V of this notice) will be accepted past the regulatory postmarked deadline of January 1, nor will DOL provide assistance, at any time, concerning any item involved in the panel review process. All information provided before the deadline must be in writing.

IV. Preferential Hierarchy for Determining Designations

In cases when only one organization is applying for a clearly identified geographic area and the organization meets the requirements at 20 CFR 632.10(b), DOL shall designate the applying organization as the grantee for the area. In cases when two or more organizations apply for the same or an overlapping area, DOL will utilize the order of preference described in the following paragraph in determining the designee for the geographic area in question. The organization which falls into the highest category of preference will be designated, assuming all other regulatory and procurement requirements are met. The preferential hierarchy is:

(1) Indian tribes, bands, or groups on Federal or State reservations for their reservation; Oklahoma Indians (see Part VII., SPECIAL DESIGNATION SITUATIONS, below); and, Alaskan Native entities (see Part VII. SPECIAL DESIGNATION SITUATIONS, below).

(2) Native American-controlled, community-based organizations with significant support from other Native American controlled organizations within the community) for their existing DOL designated service area and all non-incumbent Native American-controlled, community-based organizations that are challenging such incumbents or seeking to serve areas for which the incumbent is not re-applying.

Competition will only be permitted when a non-incumbent can demonstrate in its application, by verifiable information, that it is potentially significantly superior overall to the incumbent. Such potential will be determined by the consideration of such factors as the completeness of the application, documentation of past experience and Native American-controlled organization support, and the capability of the incumbent. In the instance of no incumbent, new applicants qualified for this category would compete against each other.

(3) Organizations (private nonprofit or units of State or local government) having a significant Native American advisory process, such as a governing body chaired by a Native American and having a majority membership of Native Americans.

(4) Non-Native American-controlled organizations without a Native American advisory process. In the event such an organization is designated, it must subsequently develop a Native American advisory process.

The Chief, DINAP, may convene a task force to assist in making hierarchal determinations. The task force may also perform such technical and advisory functions as determining which areas have more than one applicant for designation, documenting the eligibility of new applicants, and ascertaining the timeliness of final Notice of Intent submissions. The role of the task force is that of a technical advisory body.

The Chief, DINAP, will ultimately advise the Grant Officer as to which position an organization holds in the hierarchy. Within the regulatory time constraints of the designation process, the Chief, DINAP, may utilize whatever information is necessary to make the final determinations.

It is incumbent on the applying organization to supply sufficient information upon which the determination can be made. Organizations must indicate the category into which they believe they fall and must adequately support that assertion. As indicated earlier, applicants will not be able to provide any information past the January 1 postmark deadline and no information will be solicited by DINAP

V. Use of Panel Review Procedure

Competition shall occur under the following circumstances:

(1) The Chief, DINAP, determines that a new applicant qualified for the second category of the hierarchy appears to be potentially significantly superior overall to an incumbent Native American-controlled, community-based organization with significant local Native American community support.

(2) The Chief, DINAP, determines that more than one new applicant is qualified for the second category of the hierarchy and the incumbent grantee has not re-applied for designation.

(3) The Chief, DINAP, determines that two or more organizations have equal status in the third or fourth categories of the hierarchy.

When competition occurs, the Grant Officer may convene a review panel of Federal Officials to score the information submitted with the Notice of Intent. The purpose of the panel is to evaluate an organization's capability, based on its application, to serve the area in question. The panel will be provided only the information described at 20 CFR 632.11 and submitted with the January Notice of Intent. The panel results will be advisory to the Grant Officer, not binding. In reviewing information submitted by the organization, the panel will not accept simple assertions. Any information must be supported by adequate and verifiable documentation.

The following factors will be considered.

(1) Operational Capability—50 points. (20 CFR 632.10 and 632.11).

(1) Previous experience in successfully operating an employment and training program serving Indians or Native Americans of a scope comparable to that which the organization would operate if designated—30 points.

(ii) Previous experience in operating other human resources development programs serving Indians or Native Americans or coordinating employment and training services with such programs—10 points.

(iii) Ability to maintain continuity of services to Indian or Native American participants with those previously provided under JTPA—10 points.

(2) Planning Process—30 points. (20 CFR 632.11)

(i) Private sector involvement—10 points.

(ii) Community support as defined in Part VIII, DESIGNATION PROCESS GLOSSARY—20 points.

(3) Administrative Capability—20 points. (20 CFR 632.11)

(i) Previous experience in administering public funds under DOL or similar administrative requirements—15 points.

(ii) Experience of senior management staff to be responsible for DOL grant, if designated—5 points.

VI. Notification of Designation/ Nondesignation

The Grant Officer will make the final designation decision giving consideration to the review panel's recommendation, in those instances where a panel is convened; input from DINAP, OSTP, Office of Program and Fiscal Integrity, and Office of the Inspector General; and any other available information regarding the organization's responsibility. The Grant Officer's decisions will be provided to all applicants by March 1, as follows:

(1) *Designation Letter:* The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The letter will include the service area for which the designation is made. It should be noted that the Grant Officer is not required to adhere to the geographic area requested in the final Notice of Intent. The Grant Officer may make the designation applicable to all of the area requested, a portion of the area requested, or, if acceptable to the designee, more than the area requested.

(2) *Conditional Designation Letter.* Conditional designations will include the nature of the conditions, the actions required to be finally designated and the time frame for such actions to be accomplished.

(3) *Non-designation Letter.* Any organization not designated in whole or in part, for an area requested will be notified formally of the non-designation and given the basic reasons for the determination. An applicant for designation which is refused such designation, in whole or in part, may file a Petition for Reconsideration in accordance with 20 CFR 632.13. If an area is not designated for service through the foregoing process, alternative arrangements for service will be made in accordance with 20 CFR 632.12.

VII. Special Designation Situations

(1) Alaskan Native Entities

DOL has established service areas for Alaskan Native employment and training programs based on the boundaries of the regions defined in the Alaska Native Claims Settlement Act (ANCSA); the boundaries of major subregional areas where the primary provider of human resource development and related services is an Indian Reorganization Act (IRA)-recognized tribal council; and the boundaries of the one Federal reservation in the State. Within these established servce areas, DOL has designated the primary Alaskan Native-controlled human resource development services provider of an entity formally designated by such provider. These entities have been regional nonprofit corporations, associated corporations established by the regional nonprofit corporation, IRA-recognized tribal councils and the tribal government of the Metlakatla Indian Community. DOL intends to follow these principles in designating Native American grantees in Alaska for Program Years 1987 and 1988.

(2) Oklahoma Indians

DOL has established a service delivery system for Indian employment and training programs in Oklahoma based on a preference for Oklahoma Indians to serve portions of the State. Generally, service areas have been designated geographically as countrywide areas. Where a significant portion of the land area of an individual county lies within the traditional jurisdiction of more than one tribal government, the service area to a certain extent has been subdivided on the basis of tribal identification information in the most recent Federal Decennial Census of Population. However, where members

of many different tribes reside in a given county, no attempt has been made to apportion those members among all of the repective tribes. Wherever possible, arrangements mutually satisfactory to grantees in adjoining or overlapping service areas have been horored by DOL. DOL intends to follow these principles in designating Native American grantees in Oklahoma for Program Years 1987 and 1988. The DOL will exercise its designation authority in a way that will preserve the continuity of services and will prevent the under fragmentation of existing services areas.

VIII. Designation Process Glossary

In order to ensure that all interested parties have the same understanding of the process, the following are definitions for important terms:

(1) Indian or Native American-Controlled Organization

Any organization with a governing board, more than 50 percent of whose members are Indian or Native American people. Such an organization can be a tribal government, Native Alaskan or Native Hawaiian entity, consortium, private nonprofit corporation, or State agency, as long as decisions regardin the program rest with such a governing board.

(2) Service Area

The geographic area described as States, counties, and/or reservations for which a designation is made. In some cases, it will also show the specific population to be served. The service area is defined finally by the Grant Officer in the formal designation letter. Grantees must insure that all eligible population members have equitable access to services within the service area.

(3) Established Service Area

The area defined by geography or service population which DOL has previously designated as a service area for Indian and Native American CETA or JTPA purposes.

(4) Community Support

Evidence of active participation and/or endorsement from Indian or Native American-controlled organizations within the geographic area for which designation is requested. Applicants should provide supporting documentation regarding the nature of such organizations, *e.g.*, articles of incorporation or charter, size, membership, duration, etc.

While applicants are not precluded from submitting attestations of support from individuals, the business community, State and local government offices, and community organizations that are not Indian or Native American-controlled, they should be aware that such endorsements do not meet DOL's definitional criteria for community support.

Signed at Washington, DC, this 7th day of August, 1986.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

Robert D. Parker,

Grant Officer, Office of Acquisition and Assistance.

Herbert Fellman,

Chief, Division of Indian and native American Programs.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86-18514 Filed 8-14-86; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Addition to Annual List

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The addition to the annual list is effective on August 1, 1986.

SUMMARY: The purpose of this notice is to announce an addition to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, 601 D Street, NW., Attention: TEESS, Washington, DC 20213. Telephone: 202-376-6191.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981, (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 11, 1985 (50 FR 41606).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are added to the annual list of labor surplus areas, effective August 1, 1986.

The following addition to the annual list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC, on August 7, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

Addition to the Annual List of Labor Surplus Areas—August 1, 1986

Labor Surplus Area

Louisiana: Plaquemines Parish

Civil Jurisdiction Included

Louisiana: Plaquemines Parish

[FR Doc. 86-18515 Filed 8-14-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,057]

Eaton Corp., Kenosha, WI; Negative Determination Regarding Application for Reconsideration

By an application dated July 8, 1986, the Machinists Union 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 Eaton Corporation, Kenosha, Wisconsin. The denial notice was published in the Federal Register on July 16, 1986 (51 FR 25762).

Pursuant to 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 the electronic controls division at Kenosha did not directly affect the industrial drives division in Kenosha which is where the bulk of the employees were laid off. It also claims that the production of electronic controls for the drives was transferred to North Carolina and not the electrical drives as stated in the Department's notice. Finally, it claims that much of the drive market has disappeared since many of Eaton's customers are automobile manufacturers which have been adversely affected by foreign competition.

Findings in the investigation show that the workers produced industrial drives—also called electric drives—for commercial and industrial applications and electronic controls for those drives. Workers separated from employment at Kenosha during the applicable period resulted from the transfer of production of electronic controls to a company plant in Sanford, North Carolina. Declines in the production of electronic controls at the Kenosha plant in 1985 were offset by increases in the production of electronic controls at the Sanford plant. Workers separated because of the domestic transfer of production would not provide a basis for a certification.

Also, the company reported that during the period applicable to the petition, no industrial drive production workers were laid off for lack of work at Kenosha. The production of drives at Kenosha increased in 1984 and in 1985 compared to the immediately preceding year.

The statement in the notice concerning the domestic transfer of production of electrical drives instead of electronic controls for drives to a company plant would not provide a basis for certification.

The union's claim that much of Eaton's market for industrial drives disappeared since their primary customers were the domestic auto producers whose business has been adversely affected by foreign competition does not provide a basis for certification. The Department recognizes that in an economic sense employees of firms producing industrial drives and other capital equipment can be adversely affected by imports of products produced further downstream in the economy. Under the Trade Act of 1974, however, only increased imports of articles like or directly competitive with the articles produced by the workers' firm or appropriate subdivision can be considered. Imports of automobiles or capital equipment incorporating industrial drives cannot be taken into account in determining whether workers of Eaton Corporation producing industrial drives can be certified.

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 4th day of August 1986.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 86-18512 Filed 8-14-86; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Unemployment Insurance Program; Letter No. 48-86

Unemployment Insurance Program Letter No. 48-86 sets forth procedural requirements for the preparation of requests for repayable Title XII advances or voluntary repayments to be submitted by States. It also provides references and interpretative guidelines relating to sections 1201(a)(1)(A), 1202 (a), and 1202(b)(6)(A) of the Social Security Act and Sections 3302(c)(2), 3302(f) and 3302(g) of the Federal Unemployment Tax Act on these subjects.

Dated: July 29, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

Directive: Unemployment Insurance Program Letter No. 48-86

To: All State Employment Security Agencies

From: Donald J. Kulick, Administrator, for Regional Management

Subject: Governors' Requests for Repayable Title XII Advances from the Federal Unemployment Account

1. *Purpose.* To provide updated procedural requirements for the preparation of requests for Title XII advances or voluntary repayments submitted by States. This directive replaces UIPL 17-76 dated February 26, 1986.

2. *References.* Title XII, Social Security Act, as amended: Section 3302, Federal Unemployment Tax Act, as amended: UIPL 13-82.

3. *Background.* Section 1201 of the Social Security Act permits the Governor of a State to request repayable advances from the Federal unemployment account for any 3-month period during which State unemployment fund reserves are inadequate to meet current needs for benefits. Amounts needed for each month during the 3-month period must be shown separately. The amount approved for any month will be transferred to the State's account in the Unemployment Trust Fund (UTF) on a day-to-day basis as needed to accommodate agency requisitions for benefit payments.

The certification to the Secretary of the Treasury will specify that amounts so transferred during any month will not exceed the dollar amount requested by the Governor for that month. If the amount actually used is less that the amount approved for that month, the unused amount will revert to the Federal unemployment account as of the close of business of that month

Under this approach, the total amount of Title XII advances charged to a State during any month may be less than the requested amount, but will not exceed it.

4. *Requests for Advances.* Section 1201(a)(1)(A) of the Social Security Act provides that advances shall be made to a State for the payment of compensation in any 3-month period if the Governor of the State applies therefore no earlier than the first day of the month preceding the first month of such 3-month period; and provided further that all other qualifying requirements for obtaining advances are met.

a. Effective immediately, the Governor, at his/her discretion, may delegate the authority to formally request Title XII advances to the head of the State employment security agency or some other State official, in accordance with authority provided by State law.

b. To initiate the process, a letter from the Governor to the Secretary of Labor must be forwarded enclosing a certified copy of the document evidencing such delegation, together with a facsimile signature of the official to whom such authority has been delegated. Additional evidence or certification of the Governor's authority to so delegate will not be necessary; such authority will be assumed from the certified document

c. A new or redelegation of authority when a new Governor takes office is not necessary unless required by State law. A new redelegation of authority must be submitted by the Governor if the person to whom the original (or subsequent) delegation is changed.

d. The Governor, or the person to whom such authority has been delegated by the Governor, will submit a single request to the Secretary of Labor covering a 3-month period. If an advance is required for one or two months of the 3-month period, the request must cover the entire 3 months. Months during which no advances are required should indicate zero dollars needed. If it later becomes necessary to borrow for these months, an amended or supplemental request must be submitted.

e. Request for advances are to be received in the Office of the Secretary of Labor 15 working days before the first day of the applicable 3-month loan period in order to provide sufficient time for review. An advance copy of the formal request should be sent to the Employment and Training Administration, Attention: TEUMI, Room 7100, 601 D Street, NW., Washington, DC 20213. This will alert the National Office that a request is in transit and help expedite the processing of such requests. No funds will be transferred until the original request signed by the Governor, or the person to whom such authority has been delegated by the Governor, is received in the Office of the Secretary.

f. The Director of the Unemployment Insurance Service will decide if the rquest is justified, and if approved, will certify to the Secretary of the Treasury the amount to be transferred during each of the 3 months covered in the formal request. Transfer of funds to the State's account in the UTF will be made on a daily basis, as needed to meet requisitions for benefit payments, based on the State's balance in the UTF including all confirmed deposits received by Treasury through the date of transfer.

g. Amounts certified as available to a State in any month which are not required to meet that month's requisitions for payment of benefits will be returned to the Federal unemployment account as of the close of business of the month involved. Unused balances will *not* be carried forward into the next month. The State will be charged interest only on that portion of certified advances which are actually drawn down by the State.

h. The Governor or his/her delegate may submit a supplemental request for any month in which it is later determined that the previously approved amount is insufficient to meet benefit payment obligations. *A Governor or his/her delegate may telegraph supplemental or emergency advance requests to the Secretary of Labor, but these must be verified immediately by a formal written request* over an authorized signature.

Emergency requests should include: (1) The dollar amount requested, (2) the date on which the Governor or his/her delegate estimates the funds will be needed, and (3) a statement that the signed formal request is being sent on the same day as the telegram. *Actual transfer of funds will be completed only when the formal signed request is received.* The Regional Office should be notified by telephone that a telegraphic emergency request is enroute. The National Office (TEUMI) should be advised immediately of the existence of the telegram.

i. The Governor or his/her delegate will be promptly advised of action taken on requests for Title XII advances.

5. *Voluntary Repayment of Advances.* Section 1202(a) of the Social Security Act provides that the Governor of a State may at any time request that funds be transferred from the account of the State in the UTF to the Federal unemployment account in repayment of part or all of advances made to the State under Section 1201 of the Act.

a. Effective immediately, the Governor, at his/her discretion, may delegate to the head of the State employment security agency or some other State official, the authority to formally request transfers of funds from the account of the State in the UTF to the Federal unemployment account to voluntarily repay part or all of advances made to the State under section 1201 of the Act, in accordance with authority provided by State law.

b. To initiate the process, a letter from the Governor to the Secretary of Labor must be forwarded enclosing a certified copy of the document evidencing such delegation, together with a facsimile signature of the official to whom such authority has been delegated. Additional evidence or certification of the Governor's authority to so delegate will not be necessary; such authority to be assumed from the certified document.

c. A new or redelegation of authority when a new Governor takes office is not necessary unless required by State law. A new redelegation of authority must be submitted by the Governor if the person to whom the original (or subsequent) delegation is changed.

d. Section 1202(b)(6)(A) of the Act provides that any voluntary repayment by a State under section 1202(a) shall be applied against interest-bearing advances received by the State on a last made first repaid basis. This will minimize interest charges on advances received on or after April 1, 1982. Any other repayment of advances, such as voluntary repayment of non-interest-bearing advances, or repayment through reduced FUTA credits, shall be applied against all outstanding advances on a first made first repaid basis.

e. A request for voluntary repayment under section 1202(a) of the Act must be made in a letter to the Secretary of Labor signed by the Governor or the official to whom this authority has been delegated by the Governor of the State.

(1) A telegram may also be used to request a voluntary repayment subject to the following conditions:

- The effective date of the requested transfer of funds may not be earlier than the date that the telegram is received in the Office of the Secretary of Labor.
- (A) confirming letter over the signature of the Governor, or the person to whom this authority has been delegated by the Governor of the State, must be forwarded promptly, and must be received in the Office of the Secretary of Labor within 5 business days (excluding Saturdays, Sundays, and Federal Holidays) of the date the telegram was forwarded.

(2) Transfer of funds requested by telegram will be accomplished on the date requested if the above conditions are met.

(3) If the confirming letter is not received within the 5-day timeframe, the Secretary of the Treasury will be instructed to reverse the requested repayment transaction and the effective date of the requested voluntary repayment will be the later of the date the confirming letter is received in the Office of the Secretary of Labor or the date requested in the confirming letter.

(f) The effective date of a transfer of a voluntary repayment will be the later of the date specified in the letter signed by the Governor, or the person to whom such authority ha been delegated by the Governor of the State, or the date the letter is received in the Office of the Secretary of Labor; the effective date may be the earlier date of receipt of a telegram in the office of the Secretary of Labor, if the conditions in item 5.e are met.

g. The requested amount of repayment will be certified to the Secretary of the Treasury for transfer from the State's account in the Unemployment Trust Fund to the Federal unemployment account to be effective on the date as determined under items 5.e and 5.f above.

h. The Governor or his/her delegate will be promptly advised of action taken on the request for voluntary repayment of Title XII advances.

i. Scheduled partial repayments may be requested if the condition of the State unemployment reserve improves sufficiently to permit programmed repayments. A State may elect to voluntarily repay interest-bearing Title XII loans on a scheduled basis. The schedule will serve to advise the Treasury Department that authorization is being given to transfer specific amounts on designated days during the period covered by the schedule. The total repayment stated in the Governor's (or his/her delegate's) letter must agree with the sum of all repayments specified in the schedule. The determination as to a State's ability to schedule repayments rests with the State. The SESA is responsible for assuring that sufficient funds are available in its account in the Unemployment Trust Fund to make each scheduled repayment (see item 5.k below).

j. A SESA may receive Title XII advances and make voluntary repayments during the same month. However, such repayments must be made in accordance with the procedure contained in this directive. Blanket authorization arrangements which would result in an automatic transfer of funds for repayment controlled by a SESA's balance in the UTF on any day cannot be done under existing statutory requirements.

k. If there are insufficient funds in the State's account to make the full repayment requested on the effective date as determined above, the Trust/Funds Branch in the U.S. Treasury will transfer, unless otherwise notified, from the account of the State in the UTF to the Federal unemployment account on the effective date the amount detrmined to be available for transfer on that day. The Trust/Funds Branch will also notify the SESA immediately of any reduction in requested repayments.

6. *Addressing and Deliveing Requests for Advances or Repayments.* All original and confirming letters and telegrams requesting Title XII advances or voluntary repayments

must be sent to: The Honorable William E. Brock (current Secretary), Secretary of Labor, U.S. Department of Labor, Room S–2523, 200 Constitution Ave, NW., Washington, DC 20210.

Correspondence and/or telegrams being hand carried to assure "same day" log-in and date stamping *must be received in Room S–2519 prior to 5:30 P.M. on the date of delivery.* If delivered after that time, log-in and date stamping will occur the following morning.

Envelopes containing requests for loans or repayments not originating in the Office of the Governor should be clearly labelled as a "Request for Advances" or "Voluntary Repayment" on the face of the envelope.

7. *Federal Unemployment Tax Act (FUTA) Credit Reduction.* If a balance of advances to a State under section 1201 is outstanding on January 1, in two consecutive years and not fully repaid prior to November 10 of the second year, employers subject to contributions under such State's unemployment conpensation law will be subject to additional Federal unemployment taxes determined by a formula of reductions in credit against the tax. Such credit reduction will apply beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances.

The credit reductions, pursuant to section 3302(c)(2) of FUTA, increase employers' Federal tax liability each year in 0.3 percent increments plus additional amounts based on the State's average tax rate or 5-year benefit cost rate in relation to 2.7 percent beginning with the second year in which the credit reduction applies. No additional tax is payable for any year in which there is no outstanding balance of advances in a State account as of the beginning of November 10 of such year.

The amount equal to the reduced credits, excluding penalty and interest, will be applied to reduce the State's balance of advances (including advances made before April 1, 1982) on a first made first repaid basis. Revenue from reduced credits in excess of a State's balance of advances will be paid into the State's account in the Unemployment Trust Fund.

8. *Limitation (Cap) on Credit Reductions.* The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) amended FUTA by adding a new subsection (f) to Section 3302 which provides for a limitation on the amount of credit reduction applicable to a State making certain efforts to resolve its benefit financing problems. The limit or "cap" on tax credit reductions in a qualifying State is the higher of 0.6 percent or the last amount paid by employers in that State through reduced credits. Requirements to qualify for the cap are detailed in UIPL 13–82.

9. *Avoidance of Tax Credit Reductions.* Under the conditions expressed in Section 3302(g), FUTA, a State may avoid FUTA credit reductions in any year by paying an amount equal to the amount employers would pay through reduced credits for that year, and by voluntarily repaying all Title XII advances received in the 1-year period ending on November 9 of such year. Both payments would have to be made before November 10 of the taxable year, and during the 1-year period ending on November 9 of such year.

Also, the Secretary of Labor must determine that there will be sufficient funds available in the State unemployment fund to meet benefit payment requirements during the 3-month period beginning on November 1 of such taxable year, that there has been a net increase in the solvency of the State unemployment compensation system for that taxable year, and such net increase equals or exceeds the potential additional taxes for such taxable year.

10. *Action Required.* All States should follow the above procedures and submit the required documentation when requesting or repaying Title XII advances.

11. *Inquiries.* Direct questions to the appropriate Regional Office.

12. *Attachments.*

a. Sample letter from Governor to Secretary of Labor (Request for Advances)

b. Sample letter to Governor advising of action taken (Request for Advances)

c. Sample letter from Governor to Secretary of Labor (Request for Voluntary Repayment)

d. Sample letter to Governor advising of action taken (Request for Voluntary Repayment)

Attachment A.—To UIPL 48–86

Facsimile—Letter Formally Requesting Title XII Advances

The Honorable William E. Brock,
Secretary of Labor, U.S. Department of Labor, Room S–2519, 200 Constitution Avenue, NW., Washington, DC 20210

Dear Secretary Brock: I hereby apply for repayable advances to the account of the State of ——— in the Unemployment Trust Fund from the Federal unemployment account in such Fund, for the month of ———, in accordance with the provisions of Section 1201 of the Social Security Act.

My estimate of the amount of advances required to pay compensation under this State's Unemployment Compensation Law is as follows:

Amount not to exceed	Month of transfer
$———	———
$———	———
$———	———

To assure payment of all compensation that becomes due under the Unemployment Compensation Law of this State, it is requested that the actions provided under Section 1201 of the Social Security Act be taken as expeditiously as possible.

Sincerely,

Attachment B.—To UIPL 48–86

Facsimile—Response Advising of Action Taken on Request for Title XII Advances

The Honorable ———
Governor of ———

(appropriate inside address and salutation)

Dear Governor ———:

Your application for repayable advances during the months of ———, ———, and ———, from the Federal unemployment account in the Unemployment Trust Fund to the account of your State in such Fund, meets the requirements of Section 1201 of the Social Security Act.

I have certified to the Secretary of the Treasury for advance to the account of your State, subject to the availability of funds, an amount up to, but not to exceed, the amount requested for each month as follows:

Amount not to exceed	Month of transfer
$———	———
$———	———
$———	———

An advance will consist of funds actually used during each month, which may be less than, but will not exceed, the amount certified for that month. If the amount used during the month is less than the amount certified, the unused portion will revert to the Federal unemployment account. The Trust/Funds Branch in the U.S. Treasury Department will notify the State directly of the amount of interest-bearing advance actually made during each month.

All repayable Title XII advances are subject to the interest-charging provisions of Section 1202(b) of the Social Security Act. The rate of interest to be charged during calendar year ——— is ——— percent.

Acceptance of an advance is deemed to constitute acceptance of the obligation to pay any interest that may become due no later than the due date for such payment. Sections 303(c)(3) and 1202(b) of the Social Security Act and Section 3304(a)(17) of the Internal Revenue Code of 1954 apply to the timeliness and source of money for payment of interest on Title XII advances.

Sincerely,

Carolyn M. Golding,
Director, Unemployment Insurance Service.

Attachment C.—To UIPL 48–86

Facsimile—Formal Letter Requesting Voluntary Repayment of Title XII Advances

The Honorable William E. Brock,
Secretary of Labor, U.S. Department of Labor, Room S–2519, 200 Constitution Avenue, NW., Washington, DC 20210

Dear Secretary Brock: In accordance with the provisions of Section 1202(a) of the Social Security Act, I hereby request the transfer of $——— from the account of the State of ——— in the Unemployment Trust Fund to the Federal unemployment account, to be effective on ———

This requested transfer of funds represents voluntary repayment (in full or partial repayment) of repayable Title XII advances made to the State of ——— during the period ———.

Sincerely,

Attachment D.—To UIPL 48–86

Facsimile—Response to Governor Advising of Action Taken on Request for Voluntary Repayment of Title XII Advances.

The Honorable ———
Governor of ———

(appropriate inside address and salutation)

Dear Governor ———: This will respond to your recent (letter) (telegram and letter) to

Secretary Brock requesting a transfer of funds from the account of your State in the Unemployment Trust Fund to the Federal unemployment account in repayment of advances made to your State under Title XII of the Social Security Act.

I am certifying to the Secretary of the Treasury the following amount(s) for transfer on the date(s) shown:

Amount	Effective date
$_____	_____

A voluntary repayment will be applied to advances on a last made-first repaid basis to the extent sufficient funds are available in your State's account in the Unemployment Trust Fund after deducting scheduled withdrawals. Any amount of a loan repayment which cannot be completed on the date specified in this letter will be disallowed.

The agency administering your State unemployment fund will be advised by the Trust/Funds Branch in the U.S. Treasury Department of the actual application of the requested repayment(s) and the remaining balance of advances after the transaction(s) is (are) completed.

Sincerely,

Carolyn M. Golding,

Director, Unemployment Insurance Service.

[FR Doc. 86-18513 Filed 8-14-86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

District of Columbia:
DC86-1 (Jan. 3, 1986) ..... p. 80, pp. 85-86.

New York:
NY86-9 (Jan. 3, 1986) ..... p. 723.
NY86-10 (Jan. 3, 1986) ..... p. 725.
NY86-17 (Jan. 3, 1986) ..... p. 777.

Volume II

Illinois:
IL86-1 (Jan. 3, 1986) ..... pp. 64-65, pp. 74,76.

Michigan:
MI86-1 (Jan. 3, 1986) ..... p. 386.
MI86-12 (Jan. 3, 1986) ..... pp. 470,472, pp. 474-475.

Missouri:
MO86-3 (Jan. 3, 1986) ..... p. 570.
MO86-4 (Jan. 3, 1986) ..... p. 576.
MO86-5 (Jan. 3, 1986) ..... p. 579.
MO86-6 (Jan. 3, 1986) ..... p. 583, pp. 585-586.
MO86-7 (Jan. 3, 1986) ..... pp. 590-591.
MO86-10 (Jan. 3, 1986) ..... pp. 606-607.

Ohio:
OH86-1 (Jan. 3, 1986) ..... pp. 662-666.
OH86-2 (Jan. 3, 1986) ..... pp. 676-680, p. 682.
OH86-3 (Jan. 3, 1986) ..... pp. 697-699.
OH86-28 (Jan. 3, 1986) ..... pp. 752-753.
OH86-29 (Jan. 3, 1986) ..... pp. 757-795.

Oklahoma:
OK86-13 (Jan. 3, 1986) ..... pp. 821-822.

Texas:
TX86-2 (Jan. 3, 1986) ..... p. 845.
TX86-3 (Jan. 3, 1986) ..... p. 849.
TX86-4 (Jan. 3, 1986) ..... p. 852.
TX86-5 (Jan. 3, 1986) ..... p. 854.
TX86-10 (Jan. 3, 1986) ..... pp. 870-871.
TX86-14 (Jan. 3, 1986) ..... pp. 879-882.
TX86-15 (Jan. 3, 1986) ..... p. 884.
TX86-17 (Jan. 3, 1986) ..... p. 889.
TX86-18 (Jan. 3, 1986) ..... p. 891.
TX86-19 (Jan. 3, 1986) ..... p. 894.
Listing by location (index):.. pp. xiiii-xliv, pp. xxix-xxx.

Volume III

Utah:
UT86-1 (Jan. 3, 1986) ..... p. 282.

Washington:
WA86-1 (Jan. 3, 1986) ..... pp. 299-300, p. 304.
WA86-2 (Jan. 3, 1986) ..... pp. 329-330.
WA86-3 (Jan. 3, 1986) ..... pp. 339, 341.
WA86-5 (Jan. 3, 1986) ..... p. 356.
WA86-6 (Jan. 3, 1986) ..... p. 360.
WA86-7 (Jan. 3, 1986) ..... p. 362.
WA86-8 (Jan. 3, 1986) ..... pp. 365b-365d.
WA86-9 (Jan. 3, 1986) ..... pp. 365f-365g.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 8th day of August 1986.

James L. Valin

Assistant Administrator.

[FR Doc. 86–18221 Filed 8–14–86; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Meeting

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under section 1–5 of Executive Order 12196 of February 26, 1980, published in the **Federal Register**, February 27, 1980 (45 FR 12769), will meet on August 28, 1986, starting at 10:00 am in Room N3437 ABCD, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC. The meeting will be open to the public.

The agenda provides for:

I. Call to Order
II. Election of Vice Chairman
III. Introduction of New Members
IV. Report of Ad Hoc Committee on Hazard Communications
V. Proposed changes to Articles of Organization
VI. Discussion of Representation at Agency Abatement Sessions
VII. 41st Annual Federal Safety and Health Conference
VIII. Revision of Subpart I, 29 CFR Parts 1960 and 2014 Publication
IX. Discussion of Subcommittee on Occupational Health Mission and Function Statement
X. New Business
XI. Adjournment

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions received by close of business August 22, 1986, will be provided to the members of the Council and included in the record of the meeting.

The Council will consider oral presentations relating to agenda items. Persons wishing to orally address the Council at the meeting should submit a written request to be heard by close of business August 22, 1986. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed to John E. Plummer, Director, Office of Federal Agency Programs, Department of Labor, OSHA, Frances Perkins Building, 200 Constitution Avenue, NW., Room N3613, Washington, DC 20210, telephone (202) 523–9329.

Signed at Washington, DC, this 12th day of August 1986.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 86–18516 Filed 8–14–86; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least monthly of all agency requests for records disposition authority (records schedules) which include records being proposed for disposal or which reduce the records retention period for records already authorized for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C 3303a(a).

DATE: Comments must be received in writing on or before October 14, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

This public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval:

1. Department of the Air Force, Directorate of Administration (N1–AFU–86–55), Travel and Accounting Records.

2. Administrative Office of the United States Courts, Bankruptcy Division (N1–116–86–1). Records relating to the management of the bankruptcy system in the Federal court system.

3. Department of Justice, Criminal Division, Mail, File and Records Unit (N1–60–86–01). General name and

subject index cards to Criminal Division case files.

4. Department of Justice, Immigration and Naturalization Service (N1–85–86–2). Case files on documented false claims to U.S. citizenship by resident aliens or aliens entering the United States.

5. Department of Justice, Federal Bureau of Prisons (N1–129–86–1). Case files on compensation claims submitted by federal inmates for work-related injuries incurred in a prison workplace.

6. Department of Justice, Drug Enforcement Administration (DEA) (N1–170–86–1). Records relating to personnel and housekeeping matters and the implementation of the Office of Management and Budget Circular A–123.

7. Department of Justice, Drug Enforcement Administration (N1–170–86–2). Travel and obligation control files.

8. Office of Personnel Management, Office of Information Management (N1–GRS–86–1). An addition to General Records Schedule 1, Civilian Personnel Records, for agreements by which the Office of Personnel Management delegates to agencies authority to examine and certify applicants for employment.

9. Tennessee Vallay Authority, Power Operations, Division of Operations Support—Power Service Shops (N1–142–86–7 through –11). Administrative records related to shop operation, equipment inspection and personnel quality assurance training and certification.

10. Department of Transportation, Office of the Secretary (N1–398–86–1). Commuter air carrier fitness files.

Dated: August 8, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86–18467 Filed 8–14–86; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–456A]

Commonwealth Edison Co.; 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 licensee's activities or proposed activities have occurred subsequent to the construction permit review of Unit 1 of the Braidwood Station 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 Braidwood construction permits to Commonwealth Edison Company (CECO), 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 (OL) stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility in Illinois, as well as events relevant to the Braidwood construction permit review and subsequent antitrust reviews of additional nuclear units owned by Commonwealth Edison Company. In addition, the staff has considered comments from interested parties in the state of Illinois and CECO concerning CECO's business relations with its customers and competitors.

The conclusion of the staff's analysis is as follows:

Since the construction permit antitrust review of the Braidwood units in 1974 there have been subsequent reviews of the applicant's activities including antitrust reviews in 1976 for the Carroll County construction permit application and the LaSalle operating license application, and in 1983 for the Byron, Unit 1 operating license application. The Byron, Unit 1 review concluded that no significant changes had occurred in the applicant's activities up to that time, but noted that the City of Winnetka had petitioned the U.S. Court of Appeals for the District of Columbia for review of a Federal Energy Regulatory Commission (FERC) opinion. Since that review the applicant and Winnetka have filed an agreement with FERC which, if approved by the Commission, would resolve all outstanding disputes between CECO and Winnetka.

Since the Byron, Unit 1 OL review, the changes in the company's activities have involved changes in rates and rate structure, both at the retail and wholesale level, which are the result of an order of the Illinois Commerce Commission and a settlement agreement filed with the Federal Energy Regulatory Commission. Further, the applicant has contacted several electric utility companies and has offered to share participation in the Braidwood nuclear units. Based on the NRC staff review, the applicant has not unreasonably restrained these utilities from further participation in the Braidwood units.

Based upon the staff's analysis, it is my finding that there have been no significant changes in the licensee's activities or proposed activities since the completion of the previous antitrust review in connection with the construction permit.

Signed on August 8, 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 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 11th 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. 86–18503 Filed 8–14–86; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–15239; File No. 812–6310]

The Korea Fund, Inc.; Application for Exemption From Section 12(d)(3) of the Act and Rule 12d3–1 Thereunder

August 8, 1986.

Notice is hereby given that The Korea Fund, Inc. (the "Fund" or "Applicant") c/o Meredith M. Brown, Debevoise & Plimpton, 875 Third Avenue, New York, NY 10022, a closed-end investment company registered under the Investment Company Act of 1940 ("Act") filed an application on February 26, 1986, and amendments thereto on May 6 and July 25, 1986, requesting an order of the Commission pursuant to section 6(c) of the Act, exempting the Fund from section 12(d)(3) of the Act and Rule 12d3–1 thereunder to the extent necessary to permit the Fund to invest in the securities of certain companies listed on the Korean Stock

Exchange which are affiliated with the Fund's Korean investment adviser. All intersted persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for its applicable provisions.

According to the application, the Fund's investment policy is to invest at least 80% of its net assets in the securities of Korean issuers. Applicant states that the Funds's investment adviser and manager, Scudder, Stevens & Clark, Ltd. ("Manager") has contracted with the Daewoo Research Institute ("Korean Adviser") for investment advice, research and other assistance relating primarily to the Korean securities markets and related investment opportunities appropriate for the Fund. Applicant states that the Korean Adviser, registered under the Investment Advisers Act of 1940, is a wholly-owned subsidiary of Daewoo Securities Co., Ltd. ("Daewoo Securities"), the largest securities firm and licensed broker-dealer in Korea. Applicant states that the contract with the Manager provides for the Korean Adviser to maintain a separate staff and to prepare and make specific recommendations to the Manger. Additional information concerning Korean investment opportunities is also obtained by the Manager from other sources, including Korean broker-dealers.

The application states that the Korean securities market is relatively small and that the value of equity securities listed on the Korean Stock Exchange ("KSE") at December 31, 1984, was approximately 5,148 billion Won (U.S. $6.3 billion). A significant pecentage of the total market capitalization of all KSE companies was represented by the Daewoo Companies (the "Daewoo Companies"), consisting of 26 related companies. Applicant states that the members of the Daewoo Companies are active in most segments of the Korean economy and are recognized as leading participants in the industries and businesses in which they operate. Eight of the Daewoo Companies are currently listed on the KSE, three of which are among the 28 most actively traded. The securities of the 28 companies accounted for approximately 50% of the KSE's equity turnover by trading volume in 1984. Applicant states that it is the policy of the Korean government to encourage listings on the KSE, and other Daewoo Companies are expected to be listed in the near future. Applicant states that Daewoo Securities is affiliated with and is a member of the Daewoo Companies.

Applicant states that the management of each Daewoo Company has complete autonomy with respect to the operation of its business and that no Daewoo Company seeks to interfere in the management of any other Daewoo Company. Applicant states that there is some cross-ownership of securities among the Daewoo Companies, however, no one shareholder owns a controlling block of stock in all Daewoo Companies. Applicant represents that none of the other Daewoo Companies is actually involved in the business of Daewoo Securities or Korean Adviser.

Applicant states that each of the Daewoo Companies could be deemed to be an affiliated person of Daewoo Securities and the Korean Adviser if the Daewoo Companies were deemed to be under common control with Daewoo Securities and the Korean Adviser. Applicant states that many of the Daewoo Companies maintain passive investment portfolios, which include securities of other Daewoo Companies. As a result, certain Daewoo Companies own equity directly in Daewoo securities while other have indirect interests through their shareholdings in other Daewoo Companies, which in turn, have interests (direct or indirect) in Daewoo Securities.

According to the application, section 12(d)(3) of the Act may prohibit investment by the Fund in certain Daewoo Companies since it would result in the Fund's acquisition of an indirect interest in Daewoo Securities and the Korean Adviser. Rule 12d3–1(a) allows registered investment companies to effect securities purchases that would otherwise be prohibited by section 12(d)(3) of the Act provided that the company whose secutities are to be purchased derived 15 percent or less of its gross revenues from securities related activities during its most recent fiscal year. However, Rule 12d3–1(c), according to the application, in relevant part prohibits a registered investment company from acquiring any security issued by its investment adviser, promoter, or principal underwriter or any affiliated person thereof. Applicant states that because a Daewoo Company may be deemed to be an affiliated person of the Korean Adviser and to be engaged in a securities related business through its indirect ownership interest in Daewoo Securities, the Fund seeks exemption, pursuant to section 6(c) of the Act, from the provisions of section 12(d)(3) of the Act and Rule 12d3–1 thereunder.

Applicant represents that it will invest in securities of a Daewoo Company only if the following conditions are met at the time of any acquisition of such securities (i) the Daewoo Company's ownership interests, if any, in Daewoo Securities or any other securities related business are indirect; (ii) such indirect interests, determined by an inquiry procedure set forth below,[1] in the aggregate, represent no more than 1% of the equity of Daewoo Securities or such other securities related business; (iii) the Daewoo Company has no securities related activities of its own and is actively engaged in some other business (the terms "securities related activities" and "securities related business" are used as defined in Rule 12d3–1) and (iv) the acquisition does not cause more than 25% of the Fund's total assets (taken at current value) to be invested in securities of the Daewoo Companies as a group.

Applicant maintains that permitting the Fund to invest in the Daewoo Companies under the conditions described above will permit the Fund to further diversify its portfolio within its limited market of Korean securities and will enable the Fund to invest in issuers that are significant contributors to the growth of the Korean economy and

[1] According to the application, the inquiry procedure is as follows: The Fund's Korean Adviser will compile publicly available information and information otherwise available to Daewoo Securities regarding shareholding relationships connecting a given Daewoo Company to Daewoo Securities. The Daewoo Company in which the Fund proposes to invest will be asked to provide information as to its ownership percentage in Daewoo Companies of which it owns 5% or more of the voting securities (the "First Tier Subsidiaries"); in turn each of the First Tier Subsidiaries will be requested to provide information as to its ownership percentage in corporations of which it owns 5% or more of the voting securities (the "Second Tier Subsidiaries"). The Korean Adviser will then determine (based on information available to it as to a list of shareholders of Daewoo Securities) whether any voting securities of Daewoo Securities, or of any of its corporate shareholders owning 5% or more of the voting securities of Daewoo Securities (the "Daewoo Shareholders"), are owned by such Daewoo Company or any of the First or Second Tier Subsidiaries. The indirect percentage interest of the subject Daewoo Company in Daewoo Securities will be determined by taking into account the chain of ownership, if any, connecting the Daewoo Company, the First and Second Tier Subsidiaries, the Daewoo Shareholders and Daewoo Securities itself. Possible indirect interests of the Daewoo Company in Daewoo Securities by virtue of shareholdings in entities other than the First and Second Tier Subsidiaries and/or Daewoo Shareholders will not be included in the calculation of the percentage interest, unless the Korean Adviser independently of the inquiries described above has knowledge of such indirect interests. The percentage interest will be calculated by multiplying the percentage of voting equity ownership at each level in the chain of ownership. The Korean Adviser will certify to the Fund the results of the inquiry procedures.

securities market. The Fund also submits that the exemption is consistent with the purposes fairly intended by the policy and provisions of the Act and that the conflicts of interest against which section 12(d)(3) of the Act and Rule 12d3–1(c) are directed are not present here. For example, Applicant states that it would not make sense for the Fund to purchase shares of a given Daewoo Company to reward Daewoo Securities for selling Fund shares because it is a closed-end fund whose investment adviser will not benefit from increased sale of the Fund's shares and is compensated based solely on net asset value. Applicant also states that Daewoo Securities will not be able to influence significantly the purchase of Fund shares because the Fund is intended to be an investment for non-Koreans, and Daewoo Securities is only licensed to act as a broker-dealer in Korea. Applicant further states that it would be difficult for the Fund to reward Daewoo Securities by investing in a Daewoo Company since the Daewoo Company will own, at maximum, 1% of an indirect interest in Daewoo Securities and that the Fund cannot, under its investment restrictions, invest more than 5% of its assets in any one Daewoo Company.

In addition, Applicant states that the restriction specifying that the Fund may not purchase shares of a Daewoo Company if, as a result, more than 25% of the Fund's total assets would be invested in securities of Daewoo Companies as a group, will operate to prevent the Fund from skewing its portfolio in a manner disproportionately weighted toward Daewoo Companies. Applicant also states that Daewoo Securities is very unlikely to advise its clients to invest in the Fund in consideration for the Fund investing in a Daewoo Company because the customers of Daewoo Securities are Koreans who are unlikely to invest in Fund shares. In addition, the Fund is a closed-end fund and its investment advisers do not benefit from additional purchases of Fund shares. Applicant submits that the Fund Manager, compensated directly on the basis of the Fund's net asset value, has a strong incentive to maximize the Fund's asset value and not to manage the Fund in the interests of Daewoo Securities or the Korean Adviser.

Applicant states that the requested exemption will enable the Fund to further diversify its portfolio and take advantage of an investment opportunity the Manager has determined to be among the best available on the KSE. Applicant asserts that the Daewoo Companies have grown rapidly and yielded higher returns than other Korean issuers and that it believes the Daewoo Companies should continue to perform better than the securities of Korean listed companies as a whole in the future. Applicant concludes that the Fund and its shareholders will be harmed if the Fund is unable to invest in the publicly traded Daewoo Companies.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 2, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–18462 Filed 8–14–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15242; File No. 812–6222]

Merrill Lynch KECALP Growth Investments Limited Partnership 1983 et al.; Application

August 8, 1986.

Notice is hereby given that Merrill Lynch KECALP Growth Investments Limited Partnership 1983 ("1983 Partnership"), Merrill Lynch KECALP L.P. 1984 ("1984 Partnership"), Merill Lynch & Co., Inc. ("ML & Co.") and Merrill Lynch Interfunding Inc. ("MLIF," collectively, "Applicants"), 165 Broadway, One Liberty Plaza, New York, New York 10080, filed an application on October 11, 1985, and amendments thereto on March 14, and August 6, 1986, for an order, pursuant to section 17(b) of the Investment Company Act of 1940 ("Act") exempting from the provisions of section 17(a) of the Act, and pursuant to section 17(d) of the Act and Rule 17d–1 thereuder, permitting (i) the 1984 Partnership to acquire shares of common stock of New AXIA Holding Corporation ("AXIA"), CC Packaging Co., Inc. ("CC Packaging") and FGIC Corporation ("FGIC"); and (ii) the 1983 Partnership and the 1984 Partnership to acquire shares of common stock of Denny's Inc. ("Denny's"). 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.

The application states that the 1983 Partnership and the 1984 Partnership (together, "Partnerships"), limited partnerships organized under the laws of Delaware, are non-diversified closed-end management investment companies registered under the Act. Each of the Partnerships is an "employees' securities company" within the meaning of section 2(a)(13) of the Act and operates in accordance with the terms of an exemptive order granted pursuant to section 6(b) of the Act (Investment Company Act Release No. 12363, April 8, 1982) ("KECALP Exemptive Order").

Applicants state that the general partner for each of the Partnerships is KECALP Inc. ("KECALP"), a Delaware corporation and wholly-owned subsidiary of ML & Co. KECALP is responsible for managing and making investment decisions for the Partnerships. All investments made by the 1983 Partnership are approved by the Board of Directors of KECALP ("KECALP Board") and all investments made by the 1984 Partnership are approved by the Investment Committee which presently consists of eleven of the sixteen members of the KECALP Board ("Investment Committee").

The application states that ML & Co., a Delaware corporation, is a holding company. Its principal subsidiary, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"), is a securities firm and was the selling agent for the units issued by the Partnerships. Merrill Lynch Capital Markets ("MLCM") is an unincorporated group within MLPF&S which conducts its investment banking and underwriting activities. The application states that Merill Lynch Interfunding Inc., a Delaware corporation, is an indirect manufacturer and marketer of commercial and industrial products. During 1984, MLMC structured a leveraged buyout of AXIA at the request of its management. As a result of such transaction, AXIA's equity securities are owned by members of AXIA's management, MLIF, MLCM and certain of its affiliates, and several institutional investors that are not affiliated with ML & Co. or its subsidiaries. The application states that

MLIF has agreed to sell to the 1984 Partnership 300 shares of AXIA Common Stock. The shares proposed to be acquired by the 1984 Partnership represent 0.4% of AXIA's Common Stock on a fully-diluted basis. The price paid for such shares by ML & Co. was $100 per share ("Original Purchase Price") on October 30, 1984 ("Original Acquisition Date").

According to the application, CC Packaging manufactures and distributes flexible packaging materials. During 1983, MLCM structured a leveraged buyout of Cellu-Craft, Inc. on behalf of its management. As a result of such transaction, the equity securities of CC Packaging (the successor corporation to Cellu-Craft, Inc.) are owned by members of CC Packaging's management, MLIF, MLCM and an institutional investor that is not affiliated with ML & Co. or its subsidiaries. The application indicates that MLIF has agreed to sell to the 1984 Partnership 1,111 shares of CC Packaging Common Stock. Such shares represent 0.29% of the shares of CC Packaging Common Stock on a fully-diluted basis. The price paid for such shares by ML & Co. was $9.00 per share ("Original Purchase Price") on March 23, 1984 ("Original Acquisition Date").

According to the application, FGIC was organized in 1983 to provide, through one or more subsidiaries, insurance and financial guarantees for a variety of investment instruments. ML & Co. participated in the organization of FGIC and presently holds approximately 19% of FGIC's outstanding Common Stock and approximately 13% of FGIC's non-voting Cumulative Convertible Preferred Stock. The total investment by ML & Co. represents approximately 17% of FGIC's capitalization on a fully converted basis. The application indicates that ML & Co. has agreed to sell to the 1984 Partnership 4,580 shares of FGIC's Common Stock. The price paid for such shares by ML & Co. was $131 per share ("Original Purchase Price") in June, 1985 ("Original Acquisition Date").

According to the application, Denny's is in the food service industry. During 1984, MLCM structured a leveraged buyout of Denny's on behalf of its management. As a result of the leveraged buyout transaction, Denny's equity securities are owned by members of Denny's management, MLIF, MLCM and certain of its affiliates and several institutional investors that are not affiliated with ML & Co. or its subsidiaries. The application indicates that MLIF has agreed to sell to the 1983 Partnership and 1984 Partnership 4,310 shares and 8,620 shares, respectively, of Denny's Common Stock. The shares proposed to be acquired by the 1983 Partnership represents 0.2% of Denny's Common Stock on a fully-diluted basis, and the shares proposed to the acquired by the 1984 Partnership represent 0.4% of Denny's Common Stock on a fully-diluted basis. The price paid for such shares by ML & Co. was $46.40 per share ("Original Purchase Price") on January 25, 1985 ("Original Acquisition Date").

According to the application, the purchase price to be paid by the Partnerships to MLIF for the shares proposed to be acquired will be the lower of (i) the value of the investment on the date it is acquired by the Partnerships (as determined by the KECALP Board) or (ii) the cost of MLIF of purchasing and holding the investment. With respect to clause (ii), such cost shall be the Original Purchase Price paid for such shares on the Original Acquisition Date, plus carrying costs relating to such investment. For purposes of this transaction, carrying costs consist of interest charges computed at the lower of (i) the prime lending rate charged by Citibank, N.A. during the period from the date of the KECALP Board, with respect to the 1983 Partnership, or the Investment Committee, with respect to the 1984 Partnership, approves the investment until the respective Partnership acquires the investment or (ii) the effective cost of borrowings by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during this period.

The Applicants request that, pursuant to section 17(b) of the Act, the order:

(i) Permit the sale of 300 shares of Common Stock of AXIA by MLIF to the 1984 Partnership;

(ii) Permit the sale of 1,111 shares of Common Stock of CC Packaging by MLIF to the 1984 Partnership;

(iii) Permit the sale of 4,580 shares of Common Stock of FGIC by ML & Co. to the 1984 Partnership; and

(iv) Permit the sales of 4,310 and 8,620 shares of Common Stock of Denny's by MLIF to the 1983 Partnership and the 1984 Partnership respectively.

In addition, the 1983 Partnerships and the 1984 Partnership request that, pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, the order approve the participation of the 1983 Partnership and the 1984 Partnership in the Denny's transaction.

The Applicants believe that the issuance of an order is justified by both the terms of the transactions and the fact that the proposed investments are not otherwise available to the Partnerships. The application states that, with respect to the terms of the transactions, the KECALP Board (on behalf of the 1983 Partnership) and the Investment Committee (on behalf of the 1984 Partnership) have reviewed the Partnerships' proposed investments in detail. The members of the KECALP Board, including the members of the Investment Committee, are sophisticated and experienced in valuing securities and evaluating financial transactions generally. In this regard, the KECALP Board and the Investment Committee considered all information deemed relevant, including the nature of the investments, the nature of the investments by affiliates of ML & Co. in AXIA, Denny's, CC Packaging and FGIC, and the fairness of the purchase prices proposed to be paid by the Partnerships. Applicants state that the transactions were approved after consideration of the factors set forth in section 17(b) of the Act. In connection with the KECALP Board and Investment Committee deliberations and determinations regarding the Partnerships' proposed transactions, appropriate record keeping will be maintained and made available for inspection by the Commission in accordance with the Act.

According to application, in evaluating the terms of the transactions, both the KECALP Board, with respect to the 1983 Partnership's investment, and the Investment Committee, with respect to the 1984 Partnership's investment, considered the fact that the proposed purchase prices to be paid by the Partnerships will include carrying costs incurred by an affiliate of KECALP, ML & Co., if the value of the investment at the time of acquisition by the Partnerships is more than the sum of the purchase prices plus the affiliate's carrying costs. In approving purchase prices which may include carrying costs, the KECALP Board and the Investment Committee recognized that KECALP receives no compensation for serving as general partner of the Partnerships and that ML & Co. had incurred considerable expenses in organizing the Partnership. In light of these factors, the KECALP Board and the Investment Committee believe it is wholly appropriate for the purchase price paid for portfolio investments to reflect carrying costs provided that the values of the investments at the times of acquisition exceed the amount of the purchase

prices plus carrying costs. Applicants submit that to deny reimbursement for carrying costs would result in a further and unwarranted loss to ML & Co. and provide a disincentive to sell investments to the Partnerships in the future.

The application states that the second factor supporting the granting of the relief requested is that the investments are not otherwise available for purchase by the Partnerships. the KECALP Board and the Investment Committee have approved such investments for the Partnerships. The Partnerships thus submit that their respective investment programs will be prejudiced if they are not permitted to make the investments referred to in the application.

Applicants also state that the KECALP Board believes that the proposed investments are consistent with the rationale underlying the establishment of each of the Partnerships as an "employees' securities company". Similarly, the proposed transactions are consistent with the purpose of each of the Partnerships and their respective stated policies.

Applicants state that the Partnerships operate in accordance with the terms of the KECALP Exemptive Order. Pursuant to the terms of the KECALP Exemptive Order, the Partnerships are permitted to engage in transactions in which certain affiliated persons of the Partnerships may also be participants. The application states that the Partnerships believe that the KECALP Exemptive Order expressly permits joint investments between partnerships for which KECALP acts as the general partner.

The application indicates that KECALP reviewed the proposed investments in Denny's. The KECALP Board and the Investment Committee determined that such investments were consistent with the Partnerships' investment objectives of seeking long-term capital appreciation. The KECALP Board and the Investment Committee also determined that the investments in Denny's by both Partnerships would not disadvantage either Partnership in making such investments, maintaining its investment positions or disposing of such positions. In reaching such determinations, the KECALP Board and the Investment Committee considered several factors, including the difference in the amount proposed to be invested by each Partnership. It was recognized that the terms of the purchases by both Partnerships would be the same in terms of the price paid per share. With respect to the number of shares to be purchased by each Partnership, however, consideration was given to the availability of assets for investment at that time. At the date that the proposed investments were approved, the 1983 Partnership's more limited asset availability dictated the size of its investments as compared to the investment to be made by the 1984 Partnership. Accordingly, the terms of the proposed investments in Denny's Common Stock by the Partnership are not unfair or less advantageous to the 1983 Partnership, but rather, are the result of business considerations. Thus, it is submitted that the transactions would be consistent with the provisions, policies and purposes of the Act.

According to the application, in both the KECALP Exemptive Order and the Partnerships' prospectuses, it was indicated that affiliates of ML & Co. would be involved in identifying and investing in many of the Partnership's portfolio investments. The Partnerships thus submit that the order requested herein is consistent with the purposes of the Partnerships, their stated policies and the disclosure made to prospective investors. In light of the foregoing, the Partnerships request that an order be entered pursuant to section 17(d) of the Act and Rule 17d-1 thereunder regarding the investments by the Partnerships in securities issued by Denny's.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 2, 1986, at 5:30 pm, do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-18463 Filed 8-14-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15241; File No. 812-6400]

Application and Opportunity for Hearing; Ohio National Life Assurance Corp., et al.

August 8, 1986.

Notice is hereby given that Ohio National Life Assurance Corporation (the "Company"), Ohio National Variable Account R (the "Variable Account") and The O.N. Equity Sales Company ("ONESCO") (collectively, "Applicants") filed an application on May 29, 1986 and an amendment on July 28, 1986, for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") granting Applicants and certain transactions exemptions from sections 2(a)(32), 22(c), 27(c)(1) and 27(d) of the Act and Rules 6e-3(T) (b)(12), (b)(13), (c)(2), (c)(4) and 22c-1 thereunder to the extent necessary to issue flexible premium variable life insurance contracts (the "Contracts") as defined in paragraph (c)(1) of Rule 6e-3(T) which provide for waiver of future premiums upon disability of the insured and for a contingent deferred administrative expense charge. All interested persons are referred to the Application on file with the Commission for a statement of Applicants' representations made therein, which are summarized below, and are referred to the Act and Rules thereunder for the text of the relevant provisions.

Applicants state that the Company, a wholly-owned stock subsidiary of The Ohio National Life Insurance Company, is organized under the laws of Ohio and is the depositor of the Variable Account. Applicants state that the Variable Account was established under Ohio law as a "separate account" of the Company which satisfies the requirements of Rule 6e-3(T)(a) to fund the Contracts and is registered as a unit investment trust under the Act. Further, Applicants state that the Variable Account has four subaccounts, each of which invests exclusively in shares of a corresponding investment portfolio of Ohio National Fund, Inc. (the "Fund"), which is registered under the Act as an open-end, diversified management investment company. ONESCO is the principal underwriter of the Contracts.

Applicants state that they intend to offer three types of flexible premium variable life insurance contracts as defined in Rule 6e-3(T)(c)(1). Applicants maintain that the principal distinction among such contracts is the sales load structure: The Company will offer a front-end load contract, a back-end load contract and a contract without a sales load (unless otherwise specified, the

discussion in this notice and the exemptions requested apply to all three contracts).

The Contracts, state the Applicants, offer a combination of fixed and variable investment options. Applicants point out that contractowners may allocate or transfer funds to one or more divisions of the Variable Account which entitles them to participate indirectly in the investment experience of the corresponding underlying Fund, or to allocate or transfer funds to the Company's general account, which accrues interest at an annual rate of at least 5% and does not entitle contractowners to participate in the general account investment performance.

Applicants state that the Contracts include features typically associated with flexible premium variable life insurance contracts. In particular Applicants state that two death benefit options are provided: (1) A death benefit equal to the stated amount and (2) a death benefit equal to the stated amount plus the cash value. Under both options, Applicants maintain, the Company may be required to increase the death benefit to satisfy the corridor percentage test of section 7702 of the Internal Revenue Code. Applicants also state that subject to certain limitations, contractowners may increase or decrease the stated amount of insurance coverage during the life of the contract. The death benefit is guaranteed, and thus a Contract will never lapse, if a contractowner satisfies a minimum premium requirement. Applicants state that cash value under the Contracts will reflect the amount and frequency of payments, the investment experience of the Variable Account, any partial withdrawal, loans, and any charges and deductions. Finally, applicants indicate that contractowners may, subject to certain limitations, vary the timing and amount of their premium payments.

1. Contingent Deferred Insurance Underwriting Charge

Applicants request exemptions from sections 2(a)(32), 22(c), 27(c)(1) and 27(d) of the Act and Rules 6e-3(T)(b)(12), 6e-3(T)(b)(13) and 22c-1 thereunder to the extent necessary to permit imposition of the contingent deferred insurance underwriting charge upon complete surrender and lapse of the Contract within seven years after the issue date of a Contract or the date of any increase in stated amount and for a portion of such charge to be deducted upon certain partial surrenders and all decreases in stated amount during such seven year periods.

Applicants state that the contingent deferred insurance underwriting charge is an administration charge designed to compensate the Company for insurance underwriting costs, including the selection and classification of risks and processing medical evidence of insurability. Applicants state further that the charge varies from $3 to $6 per $1,000 of stated amount depending on the insured's age at issue or increase and only applies to the first $500,000 of stated amount. Applicants also state that while the Company may impose the full charge for the seven years following issue or increase, it currently intends to grade-off such charge over such seven year periods.

Applicants represent that the charge is no more than would be imposed if such administrative expenses were recovered from first year premium payments and that the charge is not expected to produe a profit. Applicants further represent that in determining the amount of the charge they have not taken into account the time value of money or the likelihood that not all contractowners will ever incur the charge or incur the charge at the same time. Finally, Applicants represent that proceds from the charge will not be used directly or indirectly to finance distribution expenses.

Applicants submit that imposition of the insurance underwriting charge on a contingent deferred basis is more favorable to contractowners in several respects than a charge deducted from first year premium payments. First, the amount of a contractowner's investment in the Variable Account is greater than it would be if the charge were deducted from first year premiums. Second, the cost of insurance component of the monthly deduction will be lower due to an increased cash value and a consequent lower net amount at risk when this charge is deferred. Third, the total amount charged to any contractowner when the charge is deferred is no greater than if this charge were taken from first year premiums. Indeed, Applicants submit, the amount charged may be less for contractowners who surrender or lapse after the second contract year due to the Company's current intention to grade-off such charge as described above. Additionally, the charge will not be imposed at all on contractowners who keep their contracts in force more than seven years from the date of issue or the date of an increase. Finally, deferring this charge means that it is never deducted from the death benefit. Therefore, conclude Applicants, contractowners receive the primary benefit of the Contract—insurance protection—without incurring such charge.

2. Disability Waiver of Monthly Deduction Rider

Applicants request exemption from Rule 6e-3(T)(c)(2) to the extent necessary to prevent the charge imposed for the disability "waiver of monthly deduction" rider (the "Rider") from being treated as sales load pursuant to Rule 6e-3(T)(c)(4). The Rider provides that if the insured becomes disabled (as defined therein) for more than six months, the monthly deduction will thereafter be waived by the Company. The amount of the monthly deductions so waived may vary with the investment experience of the variable account, inasmuch as the cost of insurance component thereof varies with the net amount as risk.

Applicants argue, however, that the Rider should properly be viewed as primarily a fixed and incidental benefit. It is fixed, they assert, in the sense that upon disability the contractowner pays no further monthly deductions, irrespective of the amount thereof. Thus, Applicants conclude, the Rider is a fixed benefit from the contractowner's perspective. Moreover, there is no cash value associated with the Rider that is distinguishable from the cash value of the Contract as a whole. Thus, the Rider appears to be the type of incidental benefit described in Rule 6e-3(T)(c)(2). Finally, Applicants represent that they have no reason to believe that the Commission in adopting Rule 6e-3(T) intended the charge for this type of bona fide insurance benefit to be deemed to be sales load.

3. Other

Applicants state that as a general condition to the order granting relief requested, Applicants represent that if and to the extent that Rule 6e-3(T) is amended to provide exemptive relief from any provision of the Act or the Rules promulgated thereunder on terms and conditions different from any exemption from such provisions granted to them by order, then Applicants shall, within any transition period provided in such amendments, take such steps as may be necessary to comply with Rule 6e-3(T), as amended, with respect to any contract issued after the expiration of such transition period to the extent Rule 6e-3(T) is then applicable.

For the reasons stated above, Applicants submit that the requested relief is necessary and appropriate in the public interest and consistent with the protection of investors and the

purposes faily intended by the policy and provisions of the Act, is well precedented, and involves technical matters unforseen when Rule 6e-3(T) was adopted.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 5, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-18464 Filed 8-14-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15240; File No. 812-6427]

Application and Opportunity for a Hearing; Prudential Insurance Co. of America, et al.

August 8, 1986.

Notice is hereby given that The Prudential Insurance Company of America ("Prudential"), The Prudential Individual Variable Contract Account (the "Account"), The Prudential Qualified Individual Variable Contract Account (the "Qualified Account"), and Pruco Securities Corporation ("Prusec"), Prudential Plaza, Newark, New Jersey, 07101 (referred to collectively as "Applicants"), filed an application on July 3, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from sections 2(a)(32), 22(c), 22(d), 26(a) (2), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rule 22c-1 thereunder to the extent necessary to permit Prudential to issue variable annuity contracts ("Contracts") providing for a recapturable bonus equal to 1% of certain purchase payments made under the Contracts. All interested persons are referred to the Application on file with the Commission for a statement of the representation contained therein, which are summarized below, and to the Act and rules thereunder for the text of the relevant provisions. Applicants state that the Account and the Qualified Account are each registered under the Act as unit investment trusts containing a number of subaccounts. Each such subaccount, state the Applicants, invests its assets exclusively in a corresponding portfolio of an underlying series management investment company affiliated with Prudential. Under the Contracts, contractholders may allocate purchase payments among the subaccounts of the Account or Qualified Account and may transfer accumulated amounts the subaccounts at net asset value and without charge, subject to certain conditions.

Applicants state that the only sales charge is a contingent deferred sales charge ("CDSL") assessed in the event of a full or partial withdrawal. Applicants further state, that in each contract year, a contractholder may withdraw up to 10 percent of the value of his or her account (as calculated on the date of the first withdrawal during the contract year) without incurring any CDSL. A CDSL Applicants maintain, is imposed upon additional withdrawals at the rate of 8% for a payment on deposit one year or less, declining by 1% for each additional year the payment has been on deposit, so that payments on deposit eight years or more may be withdrawn without imposition of the charge. Withdrawals occur on a first-in, first-out basis, without charges on amounts withdrawn in excess of aggregate purchase payments. Applicants also state that CDSL also is imposed upon annunitization, unless three or more years have elapsed since the first deposit of purchase payments under the Contract. The CDSL is not imposed on withdrawals by the beneficiary of a deceased contractholder.

Applicants state that Prudential will impose, at the end of each contract year, upon a full withdrawal on a date other than a "contract date," or upon annuitization, an annual account charge of $30, which it may not increase. Applicants assert that this charge is to reimburse Prudential for incurred administrative expenses and does not include any element of profit. Applicants explain that Prudential also deducts daily from each of the Accounts an amount equal to an annual rate of 1.20% of the value of the Account's assets, of which .8% is for assumption of mortality risks, and .4% is for assumption of the risks that the fixed annual account charge will not cover administration expenses.

The Bonus Provision

Applicants now request exemptive relief in order to issue new forms of the Contracts, to be first issued in September 1986, that provide for Prudential to add a recapturable bonus equal to 1% of certain payments made under the Contracts. Under the new Contract Prudential will, during the first three contract years and in contract years thereafter at Prudential's discretion, add an additional amount, as a bonus, of 1% to every purchase payment made under the Contract. The additional amount will be allocated to the subaccounts of the Account or the Qualified Account, as applicable, in the same manner as the purchase payment. Prudential reserves the right to limit its payment of such additional amounts to $1000 in each contract year. The additional amount will not be subject to state or local permit taxes. Applicants state that the additional amounts paid by Prudential would be recapturable by Prudential as follows: If the contractholder makes a withdrawal within the first eight contract years that consists in part of a withdrawal of purchase payments, as opposed to earnings, Prudential will recapture the 1% bonus it paid on the portion of the purchase payment or payments withdrawn. Investment earnings, are deemed to be withdrawn before purchase payments. Purchase payments are deemed to be withdrawn on a first-in, first-out basis. Applicants state that, unlike the CDSL which is not imposed on withdrawals of purchase payments up to 10% of the account value each year, any withdrawal of a purchase payment within the first eight contract years following the payment will result in recapture of the bonus. Applicants represent that Prudential intends to extend the recapturable bonus to prior forms of the Contracts as soon as it can modify the computer systems suitably. According to Applicants, Prudential expects to make this provision available to such prior Contracts at some time in 1987. Applicants also represent that all qualifying persons may purchase the contracts if they reside in a jurisdiction where the Contract is approved. Furthermore, Applicants state that they will inform, by prospectus supplement, every current contractholder about the possibility (including risks inherent therein) of deferring purchase payments under existing Contracts until this bonus provision is extended to such existing Contracts.

Exemptions requested

Applicants seek exemption pursuant to section 6(c) from sections 2(a)(32), 22(c), 22(d), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) of the Act and from Rule 22c-1 to the extent deemed necessary to permit the offer of a 1% bonus on purchase payments under the new Contracts (and later under the prior Contracts) and to permit recapture of that portion of the bonus attributable to a purchase payment upon withdrawal of the purchase payment within eight contract years of when the payment was made.

Applicants state that contractholders do not have a vested interest in the principal amount of any bonus amount until eight contract years from the date of payment have elapsed, and that until such time the bonus belongs to Prudential. To avoid any question of full compliance with the Act, Applicants seek the requested exemptions.

Applicants state that the bonus provision involves none of the abuses to which the above-referenced provisions of the Act and rules thereunder were directed. Applicants also state that the 1% bonus provision will be attractive to and in the interest of investors as it will permit contractholders to put 101% of their purchase payments to work for them in the selected investment options. Applicants further represent that the investment experience attributable to the bonus provision will always be retained by the contractholder and that the principal amount of the bonus will also be retained if the purchase payment is not withdrawn for at least eight years. For these reasons, Applicants submit that the exemptions requested are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on an application may, no later than September 5, 1986, at 5:30 pm, do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request.

After said date an order disposing of the application will be issued in this matter. 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. 86-18465 Filed 8-14-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending—Aug. 8, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412 and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44230-R-1-R-3

Parties: Members of International Air Transport Association
Dated Filed: August 5, 1986
Subject: US-South Pacific Fares
Proposed Effective Date: September 1, 1986

Docket No. 44231

Parties: Members of International Air Transport Association
Dated Filed: August 5, 1986
Subject: Baggage Shipped as Cargo from UK
Proposed Effective Date: October 1, 1986

Docket No. 44232

Parties: Members of International Air Transport Association
Dated Filed: August 5, 1986
Subject: North Atlantic Specific Commodity Rates
Proposed Effective Date: October 1, 1986

Docket No. 44239-R-1-R-11

Parties: Members of International Air Transport Association
Dated Filed: August 7, 1986
Subject: SNATC—US-Iberia/Morocco Fares
Proposed Effective Date: October 1, 1986

Docket No. 44240

Parties: Members of International Air Transport Association
Dated Filed: August 7, 1986
Subject: Rescission of Tariff Integrity Resos
Proposed Effective Date: September 1, 1986

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-18496 Filed 8-14-86; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ended August 8, 1986

The following applications for certificates of public convenience and necessiaty and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44229

Date Filed: August 5, 1986
Due Date for Answers, conforming Applications, or Motion to Modify Scope: September 2, 1986
Description: Application of Pan American World Airways, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests amendment of its certificate for Route 136 to permit service to Bogota, Columbia from Los Angeles and to allow Pan Am to integrate the Los Angeles-Bogota authority with existing certificate authority to other points in South America.

Docket No. 44238

Date Filed: August 6, 1986
Due Date for answers, Conforming Applications, or Motion to Modify Scope: Sepember 3, 1986
Description: Application of Pacific Southwest Airline pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail: Between Los Angeles and San Diego,California on the one hand, and Loreto, La Paz, and San Jose del Cabo, Mexico, on the other hand.

Docket No. 4426

Date Filed: August 8, 1986

Due Date for answers, Conforming Applications, or Motions to Modify Scope: September 5, 1986

Description: Application of Delta Air Lines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to permit Delta to provide air transportaion services between Cincinnati, Ohio and London, England.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR. Doc. 86-18497 Filed 8-14-86; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 147—Traffic Alert and Collision Avoidance System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 147 on Traffic Alert and Collision Avoidance System to be held on September 10-12, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Nineteenth Meeting held May 7-9, 1986; (3) Review of TCAS I Working Group Activities; (4) Review of Pilot Working Group Activities; (5) Briefing on TCAS III Logic; (6) Report of ATA Joint Separation Assurance Task Force Meeting; (7) Briefing on Air-to-Air Coordination, Validation Flight Tests; (8) Discussion of Horizontal Miss Distance Filtering Study; (9) Discussion on TCAS Threat Logic Configuration Control; (10) Briefing on the MITRE Altimeter Accuracy Study; (11) Report of the TCAS/Mode S Compatibility Task Group; (12) Consideration of TCAS III MOPS Material, and (13) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 8, 1986.

S.B. Poritzky,

Alternate Representative to RTCA.

[FR Doc. 86-18405 Filed 8-14-86; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Request for Removal, Without Disapproval, From Roster of Approved Trustees

Notice is hereby given, pursuant to 46 CFR 221.28, that Colonial Bank, with offices at 81 West Main Street, Waterbury, Connecticut, has requested removal, without disapproval, from the Roster of Approved Trustees. In its request for removal, Colonial Bank stated it no longer engages in activities which necessitate the Bank's certification as an approved trustee.

Dated: August 12, 1986.

By order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary.

[FR Doc. 86-18480 Filed 8-14-86; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 86-149]

Recordation of Trade Name: "The Baltimore Luggage Company"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of recordation.

SUMMARY: On June 2, 1986, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "The Baltimore Luggage Company" was published in the Federal Register (51 FR 19809). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation and received not later than August 1, 1986. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "The Baltimore Luggage Company" is recorded as the trade name used by The Baltimore Luggage Company, a corporation organized under the laws of the State of Rhode Island, located at 1919 Annapolis Road, Baltimore, Maryland 21230. The trade name is used in connection with the following merchandise manufactured in Taiwan: vinyl luggage; nylon luggage; vinyl attaches; leather attaches; jute luggage; attaches; and luggage carts.

DATE: August 15, 1986.

FOR FURTHER INFORMATION CONTACT: Beatrice E. Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-5765).

Dated: August 11, 1986.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 86-18476 Filed 8-14-86; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

State Home New Kitchen and Dining Facility; Oklahoma Veterans Center; Clinton, OK; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed construction of new kitchen and dining facility at the existing Oklahoma Veterans Center at Clinton, Oklahoma. The approximate cost of this project is $1.59 million.

Construction related traffic may cause disruption of nearby traffic flow. In addition, construction noise associated with the development of the new facility is likely to cause annoyance to patients and other occupants of the center. The impact of dust and fumes that will exist during construction will be of short effect lasting only during that phase of project development. In relation to both construction and operation, the new facility will be built in accordance with applicable Federal, State and local air quality standards.

The significance of the identified impacts has been evaluated relative to the consideration of both context and intensity, as defined by the Council on Environmental Quality (Title 40, CFR 1508.27).

This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, DC. Persons wishing to examine a copy of

that document may do so at the following office:

Director, Office of Environmental Affairs, Room 653, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202.389–3544). Questions or requests for single copies of the Environmental Assessment may be addressed to the above.

Dated: August 6, 1986.

Thomas K. Turnage,

Administrator.

[FR Doc. 86–18473 Filed 8–14–86; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Medical Center; Wilkes-Barre, PA; 60-Bed Nursing Home Care Addition; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed project "60-Bed Nursing Home Care Addition" and has determined that the potential environmental impacts from the development of this project will be minimal.

This project involves the construction of a fourth floor addition to the existing 120-Bed Nursing Home, Building Number 27. The 33,669 gross square foot addition will provide 60 additional beds and renovations to provide dining space for the total 180 NHCU beds.

No site work beyond the existing building envelope will occur. Existing parking and utilities will be sufficient.

Short-term impacts will result from construction and are temporary. They include impacts to air quality from construction equipment exhaust, and to the patients, staff, and local community from constuction noise, equipment, and traffic.

Short-term impacts will be mitigated by inclusion in the construction contract of the VA Standard Specifications, Environmental Protection Section, and by monitoring and enforcement during construction. Short-term impacts to the local community will be controlled and mitigated by regulation of hours of construction and travel routes for construction equipment.

There are no long-term impacts.

The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality (40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached based upon the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, DC. Persons wishing to examine a copy of the document may do so at the following office: Director, Office of Environmental Affairs (088A), Room 512, Veterans Administration, 811 Vermont Avenue NW., Washington, DC 20420, (202) 389–3717. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: July 29, 1986.

Thomas K. Turnage,

Administrator.

[FR Doc. 86–18474 Filed 8–14–86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 158
Friday, August 15, 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

	Item
Federal Maritime Commission	1
Federal Reserve System Board of Governors	2

1

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., August 20, 1986.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion open to the public:

1. Docket No. 86-19—Anti-Rebating Certification by Those Engaged in the Foreign Commerce of the United States—Consideration of Comments on Proposed Rule.

Portions closed to the public:

1. Trade Monitoring Methods as Applied to the Mediterranean/U.S.A. Trade.
2. Service Contract Audit Program.
3. Peruvian Cargo Reservation, Supreme Decree No. 009-86-TC—Consideration of Responses to Inquiry.
4. Use of High Cube Containers—United States/Japan Trade—Responses to section 15 Order.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking (202) 523-5725.

Joseph C. Polking,
Secretary.

[FR Doc. 86-18524 Filed 8-13-86; 10:21 am]
BILLING CODE 6730-01-M

2

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Thursday, August 21, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before the meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 13, 1986.

James McAfee,
Associate Secretary of the Board.

[FR Doc. 86-18511 Filed 8-14-86; 3:59 pm]
BILLING CODE 6210-01-M

Federal Register

Friday
August 15, 1986

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Establishment of an Experimental Population of Southern Sea Otters; Proposed Rule; Notice of Permit Applications

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Establishment of an Experimental Population of Southern Sea Otters

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of permit applications.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reintroduce southern sea otters (*Enhydra lutris nereis*] at, and contain them in the immediate vicinity of, San Nicolas Island, Ventura County, California for two purposes: (1) To implement a primary recovery action for a federally listed "threatened" species, and (2) to obtain data for assessing translocation and containment techniques, population dynamics, the ecological relationships of sea otters and the nearshore community, and the effects on the donor population of removal of individual otters for translocation. This population would be a non-essential experimental population pursuant to section 10(j) of the Endangered Species Act of 1973, as amended (ESA), and other applicable legislative authorities.

DATES: Comments from the State of California and the public must be received by November 17, 1986. Public hearings will be conducted on this proposed rule, and concurrently on the Draft Environmental Impact Statement (DEIS) associated with this proposal, on the following dates and times:

Ventura, California, September 24, 1986, 6–9 p.m.
Monterey, California, September 22, 1986, 6–9 p.m.
Brookings, Oregon, September 17, 1986, 6–9 p.m.

ADDRESSES: Questions and comments concerning this proposed rule and DEIS should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 500 NE Multnomah St., Suite 1692, Portland, Oregon 97232. Comments and materials relating to this rule and DEIS are available for public inspection by appointment during normal business hours at the Service's Regional Office in Portland, Oregon, or the Office of Sea Otter Coordination, Room E–1818, 2800 Cottage Way, Sacramento, California 95825. Public hearings will be held as indicated above at the following locations:

Ventura Avenue Adult Senior Center, 550 N. Ventura Avenue, Ventura, California
City Hall, Corner of Pacific and Madison Streets, Monterey, California
City Council Chambers, City Hall, 898 Elk, Brookings, Oregon

FOR FURTHER INFORMATION CONTACT: Mr. Wilbur Ladd, U.S. Fish and Wildlife Service, Office of Sea Otter Coordination, Room E–1818, 2800 Cottage Way, Sacramento, California 95825, (916/978–4873) or FTS: 460–4873.

SUPPLEMENTARY INFORMATION:

Background

Species Account

The Secretary of the Interior determined in 1977 (42 FR 2968, January 14, 1977) that the southern sea otter (*Enhydra lutris nereis*) was a threatened species for purposes of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531 *et seq.*). Contributing to this determination was the fact that the historic sea otter population was reduced to near extinction due to commercial fur harvesting in the 1700's and 1800's. The southern sea otter (also referred to as California sea otter) presently numbers 1,300–1,400 animals and ranges from Año Nuevo, Santa Cruz County, to the Santa Maria River, San Luis Obispo County, California. Although the population and its range has significantly increased since Federal and State bans on commercial and other hunting in 1911 and 1913, respectively, the still small population size and range and the otter's vulnerability to oil contamination warrant a threatened classification.

The sea otter, unlike most marine mammals, does not have blubber to provide insulation from the chilling effect of the ocean. The otter's dense pelage provides insulation and, if matted by oil or some other contaminant, the insulation is effectively eliminated and animals may die from hypothermia. The 1977 listing recognized that substantial quantities of petroleum products are shipped along the California coast, moving near the southern sea otter range, and are also transferred at marine terminals near the northern and southern ends of the range. Oil tanker traffic was and still is believed to pose the greatest oil spill risk to sea otters, although offshore outer continental shelf (OCS) oil development is currently increasing the oil spill risks. This latter risk was not a consideration when the species was listed as threatened in 1977.

In 1976, the California Department of Fish and Game (CDFG) estimated that the population numbered close to 1,800 and was increasing annually at about 5 percent. Recent information, however, indicates that the population has not grown significantly at least since the mid-1970's and may have declined somewhat over the past 10 years. As determined through recent studies started in 1982, this lack of growth is most likely attributable to sea otters becoming entangled and drowning in large-mesh gill and trammel nets set in nearshore waters by the local bottom fish fishery. CDFG biologists have estimated that an annual average of about 80 sea otters were accidentally drowned in set nets between 1982 and 1984 and that losses ranged from 49 to 168 per year between 1973 and 1983. This threat to the population was neither recognized nor considered in the 1977 determination. The State of California has recently enacted legislation designed to substantially reduce or eliminate the accidental drowning of sea otters in large-mesh gill and trammel nets and is considering additional legislation to further address this problem.

The status of southern sea otters was recently reviewed in the Service's 5-year review (May 1984). The review recognized the deteriorated state of the population (i.e., no growth and possibly a decline over the past 10 years, and additional threats including encroachment of OCS oil and gas development and incidental drowning in gill and trammel set nets) and the importance of moving rapidly forward with the major recovery tasks, including establishment of at least one additional population.

Pursuant to the ESA and Marine Mammal Protection Act (MMPA), the Service must utilize its authorities to recover the southern sea otter to a nonlisted status (ESA) and to restore and maintain the optimum sustainable population (OSP) level (MMPA) where consistent with maintenance and health of the marine ecosystem. The MMPA also generally prohibits the taking of any depleted species (any species listed under the ESA as threatened or endangered is considered depleted under the MMPA) for any reason other than scientific research.

The Service developed a recovery plan for the southern sea otter that was approved by the Director in 1982. This plan addresses the Service's responsibilities specifically under ESA and more generally under the MMPA. It examined possible means to protect and restore the southern sea otter and concluded that the most effective means was to establish at least one new colony sufficiently removed from the present range such that a large-scale oil spill

could not contact both the new colony and existing population simultaneously.

For purposes of ESA the Service believes present population growth characteristics are inadequate for natural recolonization of historic, albeit not all, habitat within a reasonable period. Therefore, the Service is considering the establishment of at least one colony within historic range, in an area that is abundant with prey, kelp, and other habitat requirements, relatively free of toxic pollution, and sufficiently distant from the existing range so that a catastrophic oil spill will not likely contact both the existing population and the new colony of southern sea otters.

The Service contracted with James Dobbin Associates, Inc. in 1981 to map the location of and compile ecological and socioeconomic data for potential translocation zones along the Pacific coast of Washington, Oregon and California. Based on a variety of criteria, four coastal zones were delineated as having the highest potential for successful translocations: Northern Washington; southern Oregon; northern California; and San Nicolas-Santa Barbara Islands, southern California. For reasons discussed more fully herein, San Nicolas Island is considered the preferred site.

Description of Proposal

The Service proposes to establish through translocation a second colony of southern sea otters at San Nicolas Island, Ventura County, California. The second colony would be designated a non-essential population and, for management purposes, protected, studied and contained within the specified translocation zone (see Identification of Zones segment of the Preamble, *infra*). Adjacent to the translocation zone is the management zone wherein sea otters would be removed if they were found there in order to minimize potential conflicts with other uses of the resources and to evaluate existing, and, as necessary, develop additional techniques for containing sea otters.

The proposed rule, if implemented, would simultaneously achieve the primary objectives of (1) meeting one essential criterion for potential delisting of the southern sea otter population under the ESA, and (2) obtaining information and furthering research objectives necessary for present and future management decisions and better understanding and defining OSP under the MMPA. This proposed rule is written in a format that addresses three possible legislative authorities that may exist at the time a final rule is published. These are described under the Legislative Authority section of this rule. Appropriate modifications will be made in the final rule to reflect the legislative authority that exists at that time and under which the proposal is being made.

Pre-Translocation Phase

Activities during this phase would emphasize (1) assessment of the existing population and the acquisition and analysis of behavioral data, (2) development of a plan for capturing and holding sea otters for translocation, including determination of the optimum size, age, and sex composition of the translocated colony, and (3) collection of baseline data on the ecosystem at the translocation site.

1. Assessment of the Existing Population

Insofar as possible, it is necessary to evaluate the possible impacts of removing animals from the existing population for the purpose of translocation, and to develop a monitoring program to verify hypotheses concerning expected impacts and to detect and measure unforeseen impacts. Present monitoring programs are done mainly by FWS and CDFG. Population surveys are conducted twice annually by using the technique described in the following paragraph.

Most of the coastline within the range of the population, being accessible by road, is surveyed from shore by teams of two observers each. The remaining areas are surveyed from aircraft. Behavioral studies are being done by observing tagged (flipper-tagged and radio-implanted) and untagged individual sea otters in some portions of the range. The principal emphasis of these studies is to obtain better information on population trend, diet, movements, and activity patterns.

An increased effort will be devoted to obtaining behavior and movement information from individuals marked with flipper tags and implanted radio transmitters prior to the translocation. The radio-tagging may be done in collaboration with University of Minnesota biologists that are presently radio tracking animals in California under contract to the Minerals Management Service (under Service permit No. PRT 688234). The University study is designed to investigate population dynamics, behavior and movements of sea otters in central California. Prior to each group of animals being translocated, about 30 individuals from the parent population would be instrumented with radios that have a predicted life of about 2 years. About 15 of these animals would be among the translocated individuals and would be monitored after translocation at the release site while their implanted radio transmitters are still operating. The remaining implanted animals on the mainland would be monitored for the same period to compare the effect of the removal on the parent population as well as differences in behavior. This would allow 24-hour time budgets, foraging behavior, social interactions, and movement patterns to be documented before and after the animals are translocated. These data would be used to compare behaviors and movements of individuals before and after the translocation, at both the mainland capture site and the translocation site.

2. Removal of Animals From the Existing Population

Limited information is presently available from which to make a judgment on the optimum number, and the age and sex composition of animals to be translocated. Jameson et al.'s (1982) review of previous translocations of sea otters in the eastern North Pacific Ocean indicates a correlation between success rate and size of the translocated population. However, there are limits to the practicality of this correlation. Logistics, effects of removal on the donor population, and the potential for rapidly achieving and exceeding the lower end of the range of estimated carrying capacity limits (280) for the San Nicolas Island translocation zone, which could conceivably result in a population crash and ultimately a lower equilibrium density, are factors that must be considered. Based on these findings, and considering that the future welfare of the existing population probably would be best served by minimizing the number of animals taken from it while maximizing the likelihood of success, up to 70 animals would be moved from the existing population to the translocation site in the first year. The limit of 70 animals is set so that the removal would not exceed the expected population growth rate of 5 percent, assuming the current population numbers about 1,400. The estimated long-term growth rate for the population prior to the recently experienced entanglement mortality was about 5 percent (CDFG 1976).

No more than 250 animals would be moved in total from the existing population for translocation purposes. Strategies for years 2, 3, 4, 5 and beyond will be governed by the success of the preceding effort. Translocation of additional animals would be terminated once a relatively stable group of 70 animals at San Nicolas Island, including both males and females, has been

established. If, as expected, most of the translocated animals remain at the translocation site until population growth due to natural reproduction can be demonstrated, there will be no supplemental translocation in subsequent years. However, if a substantial decline is seen in the population, additional animals may be moved to ensure success of the translocation.

Most, but not all of the translocated animals would be sexually immature (i.e., independent, up to about 2 years of age). By selecting young animals for the translocated population, it is expected that post-release dispersal would be minimized and that the future growth rate of the population would be maximized (Kenyon 1969). A further advantage of mainly using juveniles is that they are less likely to interact aggressively while in captivity or following release. The sex ratio of the immature animals selected for translocation would be approximately 4 females to 1 male, although a range of from 3.5:1 to 6:1 would be considered acceptable.

Of the animals translocated each year, up to 20 would be adults. The purpose of moving adults would be to compare movement patterns, particularly dispersal tendencies away from the translocation site, between adult and juvenile sea otters as well as to provide a small number of animals that could begin reproducing almost immediately. In selecting animals for translocation, we will try to achieve an adult sex ratio of 3 females to 1 male, or 15 females to 5 males.

3. Studies at the Proposed Translocation Site

The Service has since 1979 been conducting a monitoring program of the intertidal and shallow subtidal ecosystems at San Nicolas Island. The purposes of this program have: (1) To determine the dynamics of nearshore communities relatively free of human influence, in order to contribute to the eventual determination or refinement of an Optimum Sustainable Population for sea otters in California pursuant to the Marine Mammal Protection Act; and (2) To establish baseline ecological information in order to document the range of influences sea otters, should they be restored there, would have on various components of nearshore communities by comparing changes which occur following translocation with a pre-translocation data base. Densities of abalone, sea urchins, other invertebrates, fish, and kelp, and percent cover of the benthic algal association, are surveyed twice annually at each sample site. Lobster populations are now also being surveyed twice annually in late spring and late summer. Kelp canopies are photographed twice annually using aerial infrared techniques, once during the summer maximum extent of the canopy and once during its late winter minimum extent. Data from this program should adequately document spatial and temporal patterns of the sea otter's influence on the coastal ecosystem.

Translocation Phase

Activities during this phase would consist of capture, transport, and release of sea otters. These activities could last 5 years or more, depending on their success, although it is expected that most of this phase will be completed in the first year.

All capture, transport, and release activities would be attempted to be done between early August and mid-October. Earlier in the summer, strong northwesterly winds blow along the coast of California. These winds create heavy seas that would be a detriment to capture operations, although the release site itself is well protected from prevailing weather. After mid-October, the probability of winter storms from the North Pacific Ocean greatly increases. Although capture operations could be halted during such periods with no serious consequences, an inopportune storm could have catastrophic effects at the holding and release sites by increasing work hazards, as well as posing dangers to the animals.

1. Capture, Holding and Tagging

Capture locations would be selected preferably from about the southern one-third of the current range, primarily on the basis of logistical convenience, availability of desired age and sex groups, and welfare of the animals. Techniques proven to be effective and safe in previous translocations and other research on sea otters would be used. Simultaneous capture operations would be centered at Pt. Piedras Blancas and Morro Bay because both locations offer adequate harboring facilities for small boats.

Pt. Piedras Blancas is the only location well within the existing sea otter range that is logistically suitable for capturing sea otters. All sex and age classes are present and available for capture near Pt. Piedras Blancas. At least two sites in the vicinity of Piedras Blancas contain small concentrations of immature male and female sea otters. The primary capture area would extend from Cambria in the south to Salmon Creek in the north. After capture, sea otters would be shuttled back to the Service's Field Station at Pt. Piedras Blancas and placed in temporary holding facilities.

Morro Bay has an excellent boat harbor from which to launch capture operations. At the present time no suitable land-based holding facilities exist there; therefore floating holding pens would be anchored inside the Bay and monitored from the beach. Both male and female sea otters are available for capture near Morro Bay. Since holding pens would be located near the capture area, it would be unnecessary to transport the otters by land until they were ready to be flown to San Nicolas Island.

In the event that the desired number and composition of animals cannot be obtained from the areas described above, it is possible that additional individuals would be taken from the north end of the population's range near Monterey and Santa Cruz. These individuals would be captured from the area between Yankee Point and Point Santa Cruz, and held in facilities at the Monterey Bay Aquarium and the University of California at Santa Cruz Long Marine Laboratory.

Animals would be captured by: (1) Diver held devices (as developed by CDFG), (2) dip nets used from a small boat (as currently used by Service research personnel at Pt. Piedras Blancas for catching newly independent pups) or, (3) surface entangling nets (as used by the Service in California and Alaska, and by the Alaska Department of Fish and Game in Alaska). The dip net technique would probably be used extensively since it has been used very successfully in previous research projects for immature sea otters. Most of the translocated animals would be sexually immature, and most of the pups born in any year are weaned and become independent from their mothers by fall, which is judged to be the most suitable time of year for the translocation.

Each captured animal would be placed in holding boxes (approximately 20" wide, 36" long, 24" deep) similar to those developed by the Departments of Fish and Game in Alaska and California. These boxes have proven to be safe and effective for transporting sea otters short distances. Each individual would be taken to the docking facility and carried, or transported by truck, to the holding facilities and then, for translocation to San Nicolas Island, the sea otters would be trucked to the respective local airports. In most cases, individuals would be in transit for no longer than two hours.

Under optimum conditions, all animals to be translocated in a given year would be held at the capture sites or nearby holding facilities prior to their movement to San Nicolas Island. All animals are expected to be captured within three weeks. If logistic or weather-related difficulties are encountered, it may be necessary to spread the translocation effort over a period of up to 30–40 days. Under these circumstances, smaller groups of otters would be maintained at holding facilities, with two or more separate transport and release operations. No fewer than 20 animals would be moved to San Nicolas Island at a single time. All animals would be examined at the holding facility by a veterinarian (with experience treating marine mammals) before they are moved to the Island. The animals would be fed fish fillets and squid (*ad libitum*), supplemented by other shellfish species as available. Males and females would be held in separate tanks, and would be isolated from public view or disturbance to the greatest extent practicable. Twenty-four hour security and observation would be provided at all times when otters are in captivity. The animals would not be handled while in captivity unless required for their well-being.

All individuals would be tagged with color-coded temple tags on the interdigital webbing of the rear flippers, in varying combinations of color and position which allow identification of individuals from a distance. A permanent mark or tag, such as a small ear tag (as used by CDFG, Ames et al. 1983) or lip tattoo, would also be used to help assure "in hand" recognition of individuals in case the flipper tags were lost. As previously described under "Assessment of the Existing Population," up to 30 individuals would be captured up to one year before each transplant period and implanted with radio transmitters. Approximately half of these animals would be recaptured about one year later and translocated.

Animals would be weighed and their sex determined at the time of capture. Blood samples would be taken for genetic and veterinary studies. Teeth would be examined for general condition at the time of capture. Each animal would be injected with tetracycline, if safe and effective doses can first be determined by the Service or veterinary community, in order to provide a potential marker for future age and growth studies. If safe and effective doses are not determined prior to translocation, the Service may select a small sample of the otters to be moved from which to determine proper doses of tetracycline. Only animals judged to be in good health by the veterinarian would be moved to the translocation site. Sick animals would be released or treated by the veterinarian and then released in the capture area upon recovery.

2. Transport

The animals would be translocated from the holding facilities to San Nicolas Island by aircraft. If necessary, the cargo area would be air conditioned to 65° F or less to prevent the animals from overheating. Animals would be accompanied and kept under surveillance while in flight. During transport, the animals would be held in individual cages. The animals would not be fed during transport, although they would be sprinkled with cold water or ice if there are indications of overheating.

Under optimum conditions of weather and if the capture rate is high, animals held at Piedras Blancas and Morro Bay would be flown as a single group from the San Luis Obispo airport to San Nicolas Island. The flight would take place once all animals are in hand and judged to be in good condition. The animals would be offloaded from the aircraft at San Nicolas onto trucks, and driven immediately to the release site.

3. Release

Animals would be held in floating pens which would be securely anchored in the sand bottom at Daytona Beach, San Nicolas Island. This site is protected from onshore winds and heavy seas, which normally are from the northwest during summer and fall. It is the most suitable anchorage at San Nicolas Island and there is road access to the area.

A series of 8 to 10 floating holding pens would be used and there would be no more than 10 individuals in any pen. Males and females would be held separately. Unusually aggressive animals would be isolated from the others. The holding pens would be approximately 19' long by 14' wide by 6' deep, and constructed of a frame of aluminum tubing covered by 2" stretch nylon net. The pens would be buoyed with styrofoam blocks attached to the outside such that about two-thirds of the pens' depth is submerged. A haul-out platform for the otters would be provided on the interior of each pen. This pen design has been used successfully in previous research in Alaska and California.

A charter vessel, with large freezer capacity to store food, would anchor and stand by at Daytona Beach during the entire period that animals are being held in the floating pens. This vessel would provide a platform for 24-hour surveillance of the animals while they are in captivity at San Nicolas Island. In addition, it would serve as a food storage facility. While in captivity at San Nicolas Island, the animals' diet would consist of frozen fish and squid and would be supplemented with locally common food resources. If necessary, additional food could be air freighted from Pt. Mugu Naval Air Station to San Nicolas Island, and put aboard the vessel.

The animals would be held up to five days in floating pens at the release site. It is thought that this interval would allow the animals to recover from the stress of transit and to become more accustomed to the area. The animals would be released passively by opening the floating pens and allowing them to leave at will. To encourage feeding in their new environment, the otters would not be fed during the last 6 hours in captivity. The release would take place shortly after dawn in order to allow maximum time during daylight for the animals to visually orient themselves to their new environment, and to allow shore-based observers to follow their movements and activities for as long as possible immediately following the release.

Post-Translocation Phase

The main emphasis during this phase would be: (1) Research to monitor the translocated animals and the coastal ecosystem within the translocation zone as the translocated population and its ecosystem come to an eventual equilibrium; (2) to prevent sea otters from becoming established in the management zone; and (3) protection of the translocated colony. Estimates of the time required for the population and ecosystem to reach an equilibrium level depend mainly on initial population size, growth rate of the population, population size at carrying capacity, and growth characteristics of the population near carrying capacity. This phase of the research program would probably be concluded at the end of 10 years, at which time the need for further research would be assessed. Documentation of population, behavioral, and community changes would continue as a component of the research program until carrying capacity is reached.

1. Research

A field research program would obtain the following population information: (1) changes in distribution and size of the experimental population: (2) movement, home range, and territoriality of individually recognizable

animals; (3) foraging behavior and prey selection of individually recognizable animals; (4) activity patterns; (5) annual pup production and reproductive histories of individually recognizable females; (6) natural mortality; and (7) tag loss. It is expected that the translocated population would grow to some eventual equilibrium. The general intent of these studies would be to document changes in social behavior, foraging activities, age-sex composition, and vital rates as the population grows from low to high levels.

Systematic surveys to monitor distribution and abundance of the population, and the location of individuals, would be done from both the ground and aircraft following release of sea otters at the translocation site. Weather permitting, aerial surveys would initially be done at least daily during the first month following release in each year that otters are transplanted unless it is determined from the accumulated information that fewer surveys are needed (see below). The numbers and locations of animals seen during each of these surveys would be recorded and correlated with environmental data. Based on the limited data available from previous translocation efforts (British Columbia, Washington and Oregon), an initial decline due to dispersal away from San Nicolas Island is possible (Jameson et al. 1982), but the magnitude of this decline cannot be predicted with certainty. Because mostly immature animals will be moved and they will be passively released, and because of the deep ocean passes surrounding San Nicolas Island, it is expected that dispersal away from San Nicolas Island would be limited, if at all.

In the event of a large decline in the translocated population immediately following the release, the proposed monitoring program should provide sufficient information to determine whether its cause was mortality or dispersal. Significant mortality is not expected. If it occurred, the cause(s) of death would be determined, when possible, for those animals retrieved. If a decline was caused by dispersal away from San Nicolas Island, reports from fishermen, recreational boaters, and aerial surveys by the Service or CDFG should be sufficient to locate the animals. This should be possible with information obtained in the proposed monitoring program, together with surveillance of those areas within the existing population from which the animals were captured. The instrumented animals would be especially useful in detecting and monitoring post-release dispersal. It is hypothesized that, if substantial dispersal away from San Nicolas Island were to occur, it would be the result of a directed attempt to return to the site of capture rather than to one of the other Channel Islands or to areas along the mainland coast of southern California that are not now occupied by sea otters. If dispersal from San Nicolas Island were to result in return to the existing population, no further effort would be made to capture the dispersing animals and return them to the translocation site. If dispersal was from San Nicolas Island to some other location, the animals would be captured, and depending on the circumstances, returned and released to either the donor population or the translocation site, with return to the donor population being preferred.

Ecosystem level studies at San Nicolas Island primarily would involve monitoring littoral and sublittoral baseline stations (this includes populations of abalone, sea urchins, and fishes), kelp canopy distribution and abundance, and lobster populations. These studies would continue at the present level of effort with adjustments as needed to improve design or sampling sufficiency. This information, in conjunction with the pre-translocation data base and the population level studies, would provide documentation of changes in the structure of the coastal ecosystem as the sea otter population increases from low to high densities. Contingent upon appropriations of the funds requested in the President's budget for FY 1987, additional studies would be done on (1) the population biology of red and black abalones, (2) lobster populations, (3) plant-herbivore interactions, (4) reef fish populations, and (5) socioeconomic issues, such as the effects on kelp harvesting, shellfish and finfish harvest, and recreational activities. These studies would be necessary to understand the nature and causes of change brought about by the sea otters, and the potential effects of such changes on recreational and socioeconomic activities as well as effects on the experimental population itself and its optimum sustainable population level.

2. Containment Efforts

Because it is an island with abundant prey in surrounding waters and is separated from other shallow water areas where food is available by long distances of deep open ocean, dispersal away from San Nicolas Island is expected to be negligible prior to attainment of carrying capacity. As the animals approuch carrying capacity, an increase in dispersal to nearby islands and perhaps the southern California coast might occur. It would be possible to limit the population at or below carrying capacity under any of the legislative authorities considered in this proposed rule, and thus prevent large-scale dispersal away from the island, by one of the following techniques: (1) Selective removal of animals from the translocation zone using nonlethal methods and relocation to the parent population; or (2) imposing birth control measures on some of the individuals within the translocation zone.

The Service and CDFG would jointly manage an effort to locate otters that may disperse from the translocation zone. This effort would rely heavily on public participation/reporting. A "hot line" number would be established and publicized so that individuals who observe otters in the management zone could report the number and location of sea otters observed. The Service would seek appropriate agreements with other Federal and State agencies that have jurisdiction within the management zone (e.g., CDFG, National Marine Fisheries Service and National Park Service) to assist in reporting, capture and protection of other resources in the areas where capture and removal operations would be conducted. Aerial reconnaissance by CDFG and/or the Service would be initiated if studies at the translocation site indicate that a significant proportion (e.g., 10–20 percent) of the animals moved may have dispersed from the translocation zone. Radio-implanted otters that leave the translocation zone will be tracked to the extent possible. If repeated and verified sightings of one or more sea otters are made over a period of a week or more at any location within the management zone where they could impact fisheries, establish a breeding colony or be in danger themselves from incompatible activities, field crews will be mobilized as soon as weather and sea conditions permit to capture and remove the otter(s) from the zone.

Capture would be done by experienced State and/or Federal personnel using one or more of the same techniques used in the translocation effort, such as (1) diver-held devices; (2) surface entangling nets; or (3) dip nets. Additional techniques, such as injection of immobilizing drugs with darts, would be developed in the future, if deemed necessary. Captured otters would be returned to either the translocation zone or to the existing range. Most would either be returned to the original capture site in the existing range or released in the vicinity of Monterey Bay where their

behavior would be compared with those returned to the original capture site. Animals either would be flown or moved by air conditioned van to the release site. If not already implanted captured animals would to the extent possible be implanted with a radio transmitter in order to obtain detailed information on their behavior following their release.

Capture and relocation would serve as an effective containment technique as long as there are additional locations where sea otters are desired. Eventually, after all such areas are occupied, population stabilization may require an artificial balancing of overall births and deaths (Hofman 1985). Therefore, research would be initiated to identify and evaluate techniques for limiting population growth by reducing fecundity. This work would be done in three stages, including a thorough review of literature on birth control in other mammal populations, laboratory experiments to test the most promising techniques if any are identified, and then field experiments in Alaska with Alaskan sea otters.

3. Protection of Translocated Population

At least one special law enforcement agent would be integrated into the translocation effort. The special agent would establish regular contacts with the other parties involved in the translocation process, would develop a working knowledge of the sea otter recovery and research program and potential law enforcement problems, and would develop a cooperative enforcement arrangement with other agencies with jurisdictional responsibilities, e.g. U.S. Coast Guard, National Marine Fisheries Service, California Department of Fish and Game, U.S. Navy, and National Park Service to assist with protecting the experimental population in the most effective and efficient manner possible. That agent would be equipped with a vessel and equipment necessary to carry out frequent enforcement patrol and surveillance to minimize the chance of harassment or other illegal activities affecting the translocated sea otters. Both the on-site special agent and the translocation research team would be monitoring the new colony, therefore, any illegal activities would likely be observed and enforcement actions taken. At a minimum, the agent would be needed for the duration of the actual translocation.

Legislative Authority

The southern sea otter (*Enhydra lutris nereis*) is listed at § 17.11(h) as a threatened species under the Endangered Species Act, 16 U.S.C. 1531 *et seq.* (ESA). *See* 50 CFR 17.11(h). Section 10(j)(2)(A) of the ESA provides that the Secretary may authorize the release and related transportation of any experimental population of a threatened species outside the current range of the species if the Secretary determines that the release will further the conservation of the species. 16 U.S.C. 1539(j)(2)(A). Once released, such a population is considered an experimental population of that species at such times as it is wholly separate geographically from the donor population. Under section 4(d) of the ESA, the Secretary may by regulation determine the prohibitions and restrictions on taking and other activities that are deemed necessary and advisable to provide for the conservation of a threatened species. 16 U.S.C. 1533(d). Section 10(a)(1)(A) of the ESA further provides that the Secretary may permit, under prescribed terms and conditions, any acts necessary for the establishment and maintenance of an experimental population. 16 U.S.C. 1539(a)(1)(A). Thus, under the ESA, the Secretary has broad authority to authorize taking and other activities necessary to establish, contain, and manage an experimental population of southern sea otters.

However, the southern sea otter is also subject to the provisions of the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* (MMPA). Because the southern sea otter is listed as a threatened species under the ESA, it is automatically classified as a depleted species for purposes of the MMPA. 16 U.S.C. 1362(1)(C). Except when necessary for the welfare of the animal, the protection of the public health and welfare, or the nonlethal removal of nuisance animals, the MMPA forbids any taking of depleted species except under a permit for scientific research purposes. 16 U.S.C. 1361, 1362, 1371, 1373, 1374, 1379(h). Thus, under the MMPA, any taking involved in the establishment and containment of an experimental population of southern sea otters would be limited to that authorized for scientific research.

Section 17 of the ESA provides generally that no provision of the ESA shall take precedence over any more restrictive conflicting provision of the MMPA. 16 U.S.C. 1543. Therefore, under current legislative authority, any establishment and containment of an experimental population of southern sea otters would be constrained by the limits of an MMPA scientific research permit. Further, under current legislative authority, the Service cannot authorize incidental taking of threatened sea otters, which is contrary to the provisions of the MMPA.

Congress is now considering new legislation that would govern the establishment, protection and management of an experimental population of California sea otters. One approach would be to amend section 17 of the ESA to provide that the more restrictive provisions of the MMPA do not override the experimental population provisions of section 10(j) of the ESA. Another approach is taken in H.R. 1027, 99th Cong., 1st Sess. (1985); 131 Cong. Rec. H6467 (July 29, 1985). Section 5 of H.R. 1027 would provide special legislative authority, similar to section 10(j) of the ESA, for the establishment, containment, and management of an experimental population of California sea otters pursuant to translocation plan to be developed by regulation. H.R. Rep. No. 99–124, 99th Cong., 1st Sess. 2–3, 14 (1985); 131 Cong. Rec. H6467 (July 29, 1985). Section 5(f) of H.R. 1027 would provide that, for purposes of implementing the translocation plan, no act by authorized Service or State officials that is necessary to effect the relocation or management of any sea otter under the plan may be treated as violation of the MMPA or ESA. H.R. Rep. No. 99–124, 99th Cong., 1st Sess. 4, 20 (1985); 131 Cong. Rec. H6466 (July 29, 1985).

Drafted in accordance with current authority found in section 10(j) of the ESA, the proposed rule has been written to address the requirements of existing law while anticipating additional findings and other requirements of possible legislative amendments (H.R. 1027 and possible amendment to section 17 of the ESA to waive MMPA restrictions on ESA section 10(j) experimental populations). References to proposed legislation have been made in order to provide the opportunity for full range of public comment and to conserve administrative effort should these bills become law. This approach also responds to Congressional mandate that the Service move forward with the DEIS on the translocation proposal, considering existing legal authority as well as pending legislative initiatives. *See* Pub. L. No. 99–190, S123, 99 Stat. 1185, 1320 (December 19, 1985). None of this discussion on proposed legislation should be construed as the Service's endorsement of such initiatives. If final rule were issued under existing legislative authority, then the taking moratorium of the MMPA would apply and certain provisions of the proposed rule authorizing incidental take

[(§ 17.84(d)(4)(iv)(B) and (d)(5)(iv)(B)] and takings by permit (other than for scientific research purposes) [(§ 17.84 (d)(4)(iv)(C) and (d)(5)(iv)(C)] would be preempted by the MMPA provision. Likewise, the provision in the proposed rule on the "essentiality" finding would be deleted from any final rule if H.R. 1027 were to become law prior to the issuance of any final rule.

Identification of Zones

H.R. 1027 would require the translocation plan to specify two zones for the experimental population, translocation zone and management zone. H.R. Rep. No. 99–124, 99th Cong., 1st Sess. 3, 16–18 (1985); 131 Cong. Rec. H6465 (July 29, 1985). The translocation zone is the area in which California sea otters are to be relocated and it must have appropriate characteristics for furthering the conservation of the species, including occupiable habitat and buffer are to insulate the experimental population from adverse effects of activities that may occur outside the translocation zone. *Id.* at 3, 16; 131 Cong. Rec. H6467 (July 29, 1985). The management zone is to surround the translocation zone, but cannot include the existing range of the parent population or adjacent range where expansion of the parent stock is necessary for recovery of the species. The purposes of the management zone are to facilitate management and containment of the experimental population and to minimize to the maximum extent feasible conflict between the experimental population and fishery resources and oil and gas exploration and development activities. *Id.* Any sea otter found within the management zone is to be returned to either the translocation zone or to the range of the parent population. 131 Cong. Rec. H6465 (July 29, 1985).

Section 10(j) of the ESA requires the Secretary to identify an experimental population by regulation and requires that such population be wholly separate geographically from nonexperimental populations of the same species. 16 U.S.C. 1539(j). Regulations implementing section 10(j) require appropriate means to identify the experimental population, including its location and actual or anticipated migration. 50 CFR 17.81(c)(1).

The proposed rule would establish translocation zone for the experimental population comprised of San Nicolas Island, the nearby islet of Begg Rock, and surrounding waters within the following coordinates:

North Latitude/West Longitude

33°27.8'/119°34.3'
33°20.5'/119°15.5'
33°13.5'/119°1.8'
33°06.5'/119°15.3'
33°02.8'/119°26.8'
33°17.2'/119°56.9'
33°30.9'/119°54.2'

The translocation zone boundary is drawn taking into account the availability of food resources, rafting sites and kelp beds as well as wind and wave patterns, offshore currents and other oceanographic variables and the types and magnitude of activities that may adversely affect the experimental population. 131 Cong. Rec. H6467 (July 29, 1985). Waters surrounding San Nicolas Island out to at least the 15-fathom contour within these coordinates provide highly suitable habitat for California sea otters. Historically, sea otters were present at San Nicolas Island in considerable numbers. Kelp forests flourish near the island and prey species such as abalone, sea urchins, crabs, clams and mussels are abundant. A buffer area is added to that area identified as sea otter habitat (i.e., coastal waters within the 15-fathom contour). This buffer area is based on wind and sea conditions, projected movement of oil from hypothetical oil spills and response time required to contain or divert those spills using one or more of the existing Oil Spill Response vessels. The area delineated by the coordinates of the translocation zone provides sufficient response time to intercept and divert or possibly contain an oil spill before it could reach sea otter habitat within the 15-fathom contour around the Island, provided weather and sea conditions permit effective deployment of containment equipment. The translocation zone is also large enough to provide a buffer between sea otter habitat and fishing activities in the management zone.

The management zone set forth in the proposed rule would consist of all waters, islands, islets, and land areas seaward of mean high tide subject to the jurisdiction of the United States, including State tidelands, located south of Point Conception, California (34°26.9' N. Latitude), except for any area within the translocation zone. The management zone surrounds the translocation zone and begins approximately 50 miles to the south of the southern limit of the existing range of the parent population at the Santa Maria River. Thus, as required by H.R. 1027, the management zone surrounds the translocation zone and does not include any of the existing range of the parent population or any adjacent range where natural expansion may be necessary for recovery of the species. As discussed later in this preamble, the Service would use all feasible non-lethal means and measures to capture any sea otter found within the management zone and return it to either the translocation zone or to the range of the parent population. Capture and relocation of sea otters found in the management zone would serve to contain the experimental population and to minimize conflicts between sea otters and fishing and oil and gas exploration and development activities in the management zone.

Protective Regulations

H.R. 1027 generally provides that any member of the experimental population of California sea otters would be treated as a threatened species for purposes of sections 4(d) and 9 of the ESA. H.R. 1027, section 5(c), 99th Cong., 1st Sess. (1985). Section 9(a)(1)(G) of the ESA prohibits any violation of a regulation pertaining to a threatened species promulgated by the Secretary pursuant to authority provided by the ESA. 16 U.S.C. 1538(a)(1)(G). Section 4(d) of the ESA authorizes the Secretary to issue protective regulations for threatened species. 16 U.S.C. 1533(d).

H.R. 1027 provides several exceptions to otherwise enforceable restrictions for California sea otters belonging to the experimental population. Regardless of the zone, no act by an authorized Service or State official that is necessary to effect the relocation or management of a California sea otter under the translocation plan could be treated as a violation of the ESA or the MMPA. H.R. Rep. No. 99–124, 99th Cong., 1st Sess. 4(1985). Within the translocation zone, H.R. 1027 (as presented in 131 Cong. Rec. H6467; July 29, 1985) provides an exception to sections 7(a)(2) and the incidental taking aspects of section 9 of the ESA for "defense-related agency actions" which the bill defines as agency actions carried out directly by a military department. However, section 7(a)(4) of the ESA (the informal conference process) would apply to defense-related actions occurring within the translocation zone. *Id.* at 3. Within the management zone, H.R. 1027 would provide an exception for incidental taking during the course of an otherwise lawful activity. *Id.*

Section 10(j) of the ESA generally provides that each member of an experimental population shall be treated as a threatened species. 16 U.S.C. 1539(j). Regulations implementing section 10(j) require the establishment of protective regulations under section 4(d) of the ESA with respect to the experimental population. 50 CFR 17.81(c)(3), 17.82. The implementing

regulations for section 10(j) of the ESA also require that, to the maximum extent practicable, regulations governing an experimental population shall represent an agreement between the Service, the affected State and Federal agencies, and parties holding any interest in land which may be affected by the establishment of an experimental population. 50 CFR 17.81(d).

Within both the translocation zone and the management zone, the proposed rule would, with some exceptions, impose all of the prohibitions provided for endangered species by 50 CFR 17.21(a)–(f). Section 4(d) of the ESA authorizes the Secretary to impose with respect to a threatened species any or all prohibitions applicable to endangered species. 16 U.S.C. 1533(d). For both zones, the proposed rule would provide an exception to the prohibitions for actions by authorized Service or California Department of Fish and Game officials that are necessary to effect relocation or management of a California sea otter under the translocation plan. For both zones, the proposed rule would provide an exception to the prohibitions for any action authorized by a threatened species permit pursuant to 50 CFR 17.32 (for example, a permit authorizing research involving an experimental population sea otter to be carried out by a university or college).

With regard to the translocation zone, the proposed rule would provide an exception to the prohibitions for incidental taking during the course of a defense-related agency action carried out directly by a military department. The term "military department" does not include the Coast Guard. *See* H.R. Rep. No. 99–124, 99th Cong., 1st Sess. 18(1985). As discussed previously, this exception would be required by H.R. 1027. *Id.* at 3, 18. Because the Service will be conferring with the Navy through the section 7(a)(4) process on any action that is likely to jeopardize the continued existence of the listed sea otters, and would propose to develop a Memorandum of Understanding with the Navy, the Service does not anticipate that Navy operations on the island or its surrounding waters would adversely affect an experimental population of California sea otters.

Within the management zone, the proposed rule would provide an exception to the prohibitions for incidental taking that occurs during the course of an otherwise lawful activity. As discussed previously, this exception would be required by H.R. 1027 to avoid conflicts between sea otters and fishing activities, oil and gas exploration and development, and other resource-related activities. *See* H.R. Rep. No. 99–124, 99th Cong., 1st Sess. 3, 16–17 (1985); 131 Cong. Rec. H6468 (July 29, 1985). It also reflects agreement between the Service and other agencies and parties that would be affected by establishment of the experimental population. *See* 50 CFR 17.81(d). (If translocation were carried out under existing authorities incidental take would be prohibited unless the law is amended to provide specifically for such taking.) For the reasons given above, the Service finds that the protective regulations proposed in this rule are necessary and advisable for the conservation of the experimental population of sea otters.

Applicability of Section 7(a)(2) Within the Translocation and Management Zones

Under section 7(a)(2) of the ESA, Federal agencies must ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of an endangered species or a threatened species or result in the destruction or adverse modification of designated critical habitat. Any Federal action that "may affect" an endangered or threatened species or critical habitat must be evaluated through formal consultation under section 7. The southern sea otter, a threatened species, is generally protected by this interagency consultation requirement.

However, the applicability of section 7(a)(2) to a translocated sea otter population depends on the legislative authorities under which a translocation is carried out. If a translocation is approved to be carried out under section 10(j) of the ESA rather than under H.R. 1027, the applicability of section 7(a)(2) would depend on whether the Service finds that the experimental population is essential to the continued existence of the subspecies. (*See* discussion on essentiality finding, *infra.*) Because the Service proposes to designate the San Nicolas Island experimental population as "nonessential," section 7(a)(2) would not apply to the translocated sea otters found within the translocation or management zones (if H.R. 1027, or similar legislation, is not adopted). Sea otters that may stray into areas within the management zone that are units of the National Park System or National Wildlife Refuge System would not become subject to section 7(a)(2) requirements at that location because they would be removed under the Service's containment authority. The conservation provisions of section 7(a)(1) and the informal conference requirement of section 7(a)(4) would apply to a "nonessential" experimental population. On the other hand, if the Service, after reviewing public comments and other relevant information, found the experimental population to be "essential," then the full protections of section 7(a)(2) would apply to the translocated sea otters. *See* section 10(j)(2)(C) of the ESA.

If, however, the sea otter provisions of H.R. 1027 become law before a final decision is made on a translocation, the Service's finding on "essentiality" would be irrelevant (and corresponding portions of this proposed rule would be inapplicable), because H.R. 1027 establishes precise limits on the applicability of section 7(a)(2) to an experimental sea otter population. Under H.R. 1027 the location of the federal action is controlling: if the proposed action is to be implemented within the translocation zone (except for defense-related agency actions and other actions initiated prior to the enactment of H.R. 1027), then the requirements of section 7(a)(2) would apply; if the proposed action is to be implemented within the management zone (although adverse effects could spill over into the translocation zone), then section 7(a)(2) does not apply, unless the proposed action "may affect" the parent population of southern sea otters, in which case the required consultation would be limited to the effects of the Federal action on the parent population. H.R. 1027 further provides that the informal conference requirement of section 7(a)(4) of the ESA applies to Federal activities within the management zone and to defense-related activities (*i.e.*, actions directly implemented by a military department) in either zone. Under H.R. 1027, the Service would have the authority and responsibility to remove otters from a unit of the National Park System or a marine sanctuary if such unit was located within the management zone. 131 Cong. Rec. H6467 (July 29, 1985).

Containment

H.R. 1027 would require, as a component of the translocation plan, that the Service describe measures, including an adequate funding mechanism, to isolate and contain the experimental population. The legislation emphasizes the importance of maintaining an otter-free management zone in order to prevent, to the maximum extent feasible, conflict with fishery and other resources within the management zone by the experimental population. H.R. 1027 delegates broad authority to capture and remove, by nonlethal means, otters from any

location within the management zone, including units of the National Park System or marine sanctuaries. The legislative history for H.R. 1027 specifically acknowledges that members of the parent population may occur within the management zone and requires their removal in order to maintain that zone as free of otters. 131 Cong. Rec. H6467 (July 29, 1985) states that successful implementation of a "zonal management" concept could greatly improve the recovery of the sea otter by reducing threats to the species and by reducing conflicts with other resources. Containment of the experimental population at San Nicolas Island by maintaining the surrounding management zone as otter-free would result in implementation of zonal management for southern California south of Point Conception since maintenance of the otter-free zone associated with the experimental population would also result in prevention of natural expansion of the parent population south of Point Conception into southern California.

In order to carry out isolation and containment requirements of H.R. 1027 or other statutory authority that may exist at the time of implementation, the Service and CDFG would jointly conduct an effort to locate and remove otters that may disperse from the translocation zone or otherwise appear in the management zone.

The methodology for conducting the containment effort was described previously under "Post-Translocation Phase 2. Containment Efforts." If repeated and verified sightings of one or more sea otters are made at any location within the management zone over a period of one week or more at any location within the management zone where they could impact fisheries or be in danger from incompatible activities, field crews will be mobilized to capture and remove the otter(s) from the zone as soon as weather and sea conditions permit.

With regard to containment, it would be necessary to determine when the population is approaching carrying capacity of the habitat within the translocation zone. This should be evident from information that would be obtained in the proposed monitoring program. The following changes are expected as the population approaches carrying capacity: (i) The growth rate of the population is expected to decline; (ii) the juvenile mortality rate is expected to increase to about 70 percent or higher; (iii) the time spent foraging is expected to increase from 20–30 to over 50 percent of the total time budget; and (iv) the diet is expected to diversify to include less nutritious prey and prey that requires more energy to obtain.

As discussed earlier in this document, a minimum of about 10 years is expected for the population to reach carrying capacity. Dispersal away from San Nicolas Island is expected to be negligible prior to attainment of carrying capacity. As the animals approach carrying capacity, dispersal to nearby islands and perhaps the southern California coast may occur. It would be possible to limit the population at or below carrying capacity, and thus prevent large-scale dispersal away from the Island and possibly maintain a higher reproductive rate, by one of the following three techniques: (i) Capturing animals from the population for translocation elsewhere, (ii) imposing birth control measures on some of the individuals; or (iii) selective or random culling of the population which would require changes in statutory authority if lethal means were to be considered. A permanent Sea Otter Management and Coordination Office would be established and maintained at a field location near the "management zone." The office would coordinate the containment effort, verify and respond to reports of otters in the management zone, maintain public relations and interagency coordination and cooperation, serve as a contact point and source of information for the public and other agencies, continue to coordinate the overall recovery program for the California sea otter, take the lead in working with the State(s) on a long-term management plan for the southern sea otter, and eventually assume certain other management functions such as routine population monitoring, incidental-take monitoring, etc. The Office would work closely with State biologists to remove otters from the management zone.

Successful implementation of this plan would depend on an adequate commitment of funding and personnel. The Service has sought funding through its normal Congressional appropriations process. Contributions from other Federal sources and non-Federal sources may also be obtained. Federal funding would be administered through the Service. Although the Service cannot obligate funds for which it has not received an appropriation, the Service has requested funding in the FY–87 budget for research, management, and containment of the experimental population.

The Service could also enter into interagency agreements for the transfer of Federal funds from another agency to the Service. Such an agreement would be sought when interagency cooperation would facilitate achieving program policies, requirements, or goals. Also, unexpended balances of Federal funds are expected to be available for grants for specific activities can be granted by the Service to States that have entered into cooperative agreements under section 6 of the ESA. Research, management, and containment of the translocated population would be considered an appropriate use of such funds while the species is listed under the ESA. Subsequent to delisting, the respective State where the experimental population exists may request grants from the Service under provisions of the Federal Aid in Wildlife Restoration (Pittman-Robertson) Act, or, if management of the southern sea otter is eventually transferred to that State, under sections 109(j) and 110 of the MMPA, subject to the availability of funds for these purposes.

Non-Federal funding could be received through donations, and such donations would be administered through the National Fish and Wildlife Foundation.

Effects on Recovery and Section 7 Determinations

H.R. 1027 would require that the translocation plan contain a description of the relationship of implementation of the plan to the status of the species under the ESA and to determinations of the Secretary under section 7 of the ESA. The following section describes those relationships. Terminology used reflects the language contained in H.R. 1027, as well as in the ESA. Throughout this discussion, the terms new population, experimental population, and colony are used interchangeably when referring to the translocated otters.

Relationship to the Status of the Species

The recovery plan for the southern sea otter contains five goals and numerous tasks that must be accomplished in order to recover and remove the species from the Federal list of endangered and threatened species. The five broad goals are to: (1) Minimize the risk of oil spills; (2) minimize the possible effects of oil spills; (3) minimize vandalism, harassment, and incidental take of sea otters; (4) monitor recovery progress of the existing population and any new colonies; and (5) integrate recovery plans into development and management plans of local coastal governments. The proposed translocation is intended to address primarily the goal of minimizing the

possible effects of oil spills. Specifically, the recovery plan states the following in regard to delisting, which is directly relevant to the relationship of a translocation to the overall status of the species:

"Delisting should be considered when the southern sea otter population is stable or increasing at sustainable rates in a large enough area of their original habitat that only a small proportion of the population would be decimated by any single natural or man-caused catastrophe. To reach this point: (1) At least one additional population of sea otters must be established outside the current population range, (2) the existing population of sea otters and its habitat must be protected, and (3) the threat from oil spills or other major environmental changes must be minimized."

The successful establishment of at least one additional colony or population would result in the attainment of one of these criteria. In order to consider whether recovery is attained, the other criteria would need to be evaluated in depth to determine whether or not oil spill and other major environmental or population threats are minimized to the maximum extent practicable. Although progress toward achievement of all five recovery plan goals would have to be evaluated and each goal met before delisting could occur, the establishment of at least one additional colony would be a prerequisite to consideration of delisting in order to meet the recovery plan requirements.

The relationship of translocation to the status of the California sea otter population, from an ESA standpoint, would change sequentially through distinct stages. The critical element in the sequence is the point at which the experimental population would be determined by the Service to be "established," based on specific scientific criteria. The Service defines "established experimental population" as one which meets the following criteria: an estimated minimum of 150 healthy male and female sea otters residing within the translocation zone, little or no emigration into the management zone occurring, and a minimum annual recruitment of 20 sea otters into the experimental population occurs within the translocation zone for at least 3 years of the latest five-year period. The population estimate would be derived by the Service from periodic ground and aerial counts conducted by the Service and/or California Department of Fish and Game, or designated agents thereof, with appropriate adjustment factors to account for visibility or other counting technique biases. Annual recruitment would be derived by the Service using a combination of factors such as known pup production and mortality and annual growth of the experimental population as a whole as evidenced by results from periodic counts and population estimates.

The minimum of 150 otters estimated to be residing within the translocation zone and minimum annual recruitment of 20 are based on the expectation that this combination should be sufficient to be self-sustaining and to supply at least 20 primarily immature otters per year for several years if it became necessary for replenishing the parent population in the event of a catastrophic event such as a large oil spill. A minimum of 20 immatures is believed necessary based on empirical evidence from previous translocation efforts in which sea otters from Alaska have been used to attempt to reestablish populations in other areas of historic habitat. The figure of 20 is believed to be a reasonable minimum number that could be expected to remain in an area and form a breeding nucleus from which repopulation through natural reproduction might occur, although there have been no definitive studies to demonstrate that 20 would be either an optimum or minimum number. Carrying capacity, a threshold that would be determined through research, would not necessarily have to be reached in order for the new population to be considered established if it met the criteria stated above.

In addition to defining when the experimental population would be considered established, criteria are also needed to describe the circumstances in which the Service would consider the translocation to be a failure. The translocation would generally be considered to have failed if one or more of the following conditions existed:

(1) If, after the first year following initiation of translocation or any subsequent year, no translocated otters remain within the translocation zone and the reasons for emigration or mortality cannot be identified and/or remedied;

(2) If, within three years from the initial transplant, fewer than 25 otters remain and the reasons for emigration or mortality cannot be identified and/or remedied;

(3) If, after two years following the completion of the transplant phase, the experimental population is declining at a significant rate and the translocated otters are not showing signs of successful reproduction (i.e., no pupping is observed); however, termination of the project under this and the previous criterion may be delayed, if reproduction is occurring and the degree of dispersal into the management zone is small enough that the effort to continue to remove otters from the management or no-otter zone would be acceptable to the Service and the affected State;

(4) If the Service determines, in consultation with the affected State, that otters are dispersing from the translocation zone and becoming established within the management zone in sufficient numbers to demonstrate that containment cannot be successfully accomplished. This standard is not intended to apply to situations in which individuals or small numbers of otters are sighted within the management zone or temporarily manage to elude capture. Instead, it is meant to be applied when it becomes apparent that, over time (one year or more), otters are relocating from the translocation zone to the management zone in such numbers that:

(a) An independent breeding colony is likely to become established within the management zone, or (b) they could cause economic damage to fishery resources within the management zone. It is expected that the Service could make this determination within a year provided sufficient information is available;

(5) If the health and well-being of the experimental population should become threatened to the point that the colony's continued survival is unlikely, despite the protections given to it by the Service, State, and applicable laws and regulations. An example would be if an overriding military action for national security proposed that would threaten to devastate the colony and removal of the otters was determined to be the only viable way of preventing the loss of the colony.

If, based on any one of these criteria, the Service would conclude, after consultation with the affected State, that the translocation had failed to produce a viable, contained experimental population, the original experimental population rulemaking would be amended to terminate the experimental population, and all healthy otters remaining within the translocation zone would be captured and placed back into the range of the parent population. Efforts to maintain the management zone free of otters would be curtailed after all reasonable efforts had been made to remove all otters that were within the management zone at the time

of the decision to terminate the experimental population.

Prior to declaring the translocation a failure, a full evaluation would be conducted into the probable causes of the failure. If the causes could be determined and legal, reasonable remedial measures identified and implemented, consideration would be given to continuing to maintain the experimental population. If such reasonable measures could not be identified and implemented, the results of the evaluation would be published in the **Federal Register** with a proposed rulemaking to terminate the experimental population.

The following is a general description of the stages of growth and establishment of the experimental population, and how they would relate to the status of the California sea otter population as a whole if translocation were to take place. Figure C.1 is a schematic illustration of the stages of growth and establishment of an experimental sea otter population.

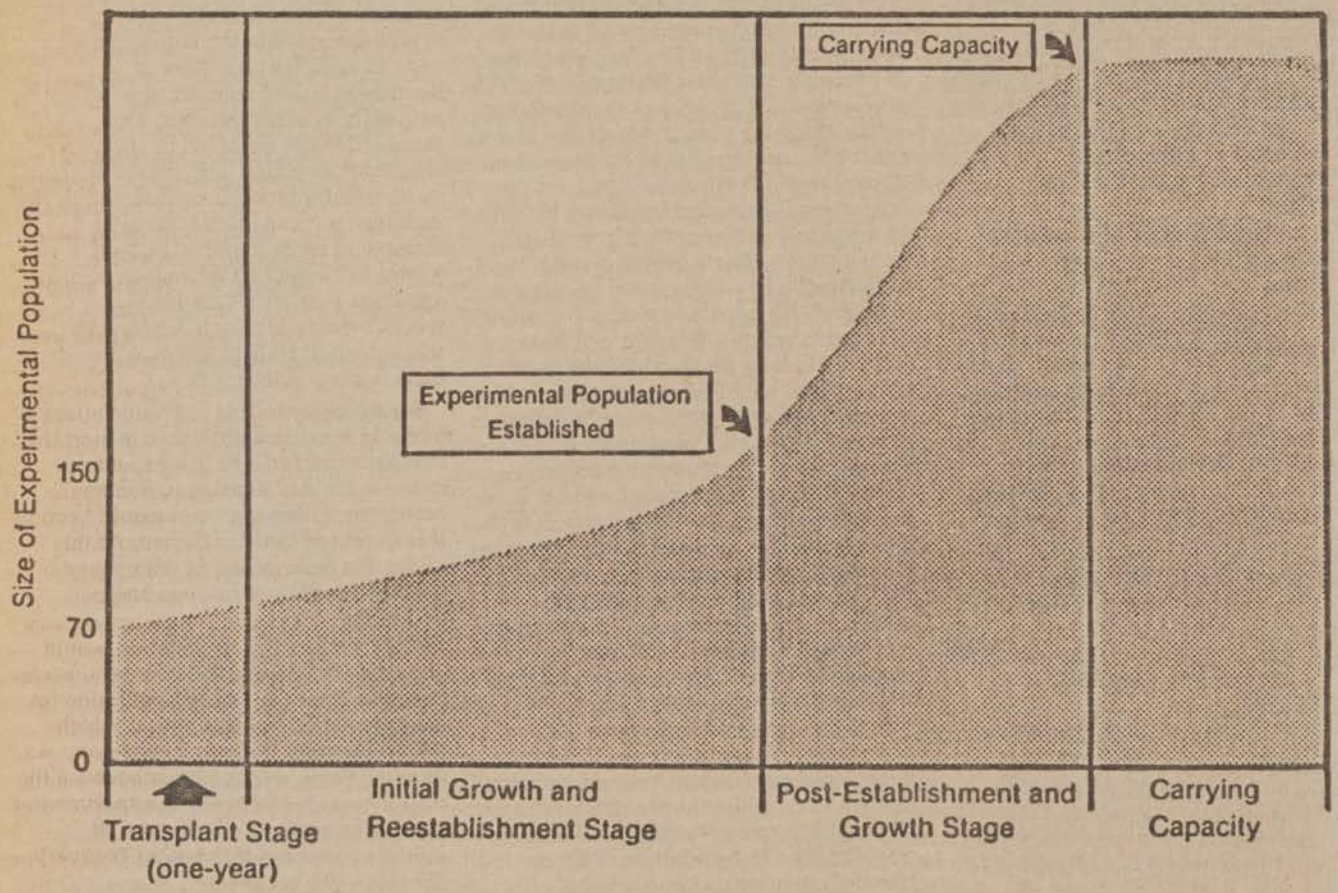


Figure C.1. Stages of establishment and growth of an experimental population of sea otters.

1. Transplant stage. This constitutes the approximately one-year period during which sea otters from the parent population would be actively captured and transplanted to the translocation site. Up to 70 otters would be moved to the site during the first year, supplemented as necessary with no more than 70 individuals in any subsequent year. If, as expected, most of the translocated otters remain within the translocation zone until population growth due to natural reproduction can be demonstrated, there would be no supplemental translocation to the site in subsequent years except for occasional small numbers (up to five per year) to provide for genetic exchange with the parent population. However, if a substantial decline is seen in the population or a serious imbalance in the sex ratio occurs, additional otters may be moved to the site in subsequent years, not to exceed a total of 250 or an annual maximum of 70. Based on this strategy, and if a sufficient mix of healthy male and female otters existed within the translocation zone and were apparently sedentary and showing little or no sign of dispersing from the zone, the transplant period would end. This could occur after the first year or perhaps later if supplements were necessary. A status review of the parent population, comparable to the five-year reviews required by the ESA, would be conducted near the beginning of translocation to serve as a baseline for evaluating recovery progress.

2. Initial growth and reestablishment stage. This comprises the period between the end of the transplant stage and the point at which the criteria for establishment of the experimental

population are met. It is a period of intense observation of both the experimental population and the parent population. The primary focus would be to evaluate how well the new population is adapting to its new environment and, in particular, its reproduction and dispersal tendencies. It is also a period for evaluating the effects of translocation on the parent population, including effects on growth and range expansion. The initial growth and reestablishment period would likely be at least 5–6 years, depending on how long it would take for the nucleus of the new population to achieve the "established state" recruitment criteria and to reach a minimum estimated size of 150.

After the new population is deemed to be established, the Service would evaluate the overall success of the translocation and relate it to the recovery plan goals and criteria and the previous five-year and annual status reviews of the population as a whole. The southern sea otter would be eligible for consideration for delisting if the translocation were successful (i.e., the population established) and other recovery criteria satisfied. At this point the procedures to propose delisting the southern sea otter from the Federal list of endangered and threatened species would be initiated by the Service. Research on the experimental population and related changes in the ecosystem would continue, as would containment and maintenance of the designated management zone as otter-free by the Service and/or the respective State wildlife agency.

It is conceivable that, under ideal conditions, nearly all of the 15 adult females and some of the 40 females translocated as immatures could be reproducing with the first 2–3 years of the initial growth and reestablishment stage; however, the new population could not be deemed established until a minimum population estimate of 150 and minimum annual recruitment of 20 had been achieved for at least 3 of the last 5 years. If recruitment and population growth did not occur at this rate initially, the period of initial growth and reestablishment would continue until the criteria were met, or until it was determined that the experimental population had failed. The proposed translocation would be designed to maximize the chance of success, thus, it is likely that the experimental population would become established relatively quickly after completion of the transplant phase.

The Service does not consider the mere presence of sea otters in the translocation zone as an indication that a new population is established. If a catastrophic event were to decimate a portion of the parent population, it is possible that the relocated otters could be used to restore the damaged portion of the parent population; however, it would also likely eliminate the value of the new population to serve as a reserve colony for providing stock to restore subsequently damaged areas and it could eliminate the reproductive viability of the colony such that the remaining animals could not be self-sustaining. Therefore, to be considered established it must be a reproductively viable unit, capable of maintaining itself even if animals are removed each year for several years for purposes of repairing damage to the parent population. The translocation zone should have a carrying capacity capable of supporting a population large enough to supply at least 20 mostly immature animals yearly for several years for purposes of repopulating areas of the existing range in the event that a catastrophic event decimates a portion of the parent population.

A single additional reproductively viable population of sea otters could be sufficient for recovery of the species pursuant to ESA. Thus, it is possible that recovery and delisting could occur with a single successful translocation, assuming that other recovery criteria are satisfied.

3. Post-establishment and growth phase. This is the period after the experimental population would be deemed established and actively growing toward the carrying capacity of the habitat within the translocation zone. During this period, intensive research and monitoring would continue in order to document changes in the nearshore ecosystem of the translocation zone, and the behavior, reproduction, and dispersal tendencies of otters in the experimental population.

During the post-establishment and growth stage, the experimental population would contribute to the total size of the California sea otter population and its numbers and location would be added to those of the parent population when describing the population size and distribution of the California sea otter for any purpose.

Under the current approved recovery plan, recovery criteria are not defined in terms of specific population goals, but, rather, by the need to establish at least one additional colony and protect the existing mainland population in California. Because establishment of the experimental population, along with achievement of other recovery plan goals, could be sufficient to consider delisting from the threatened species list, the addition of otters during the post-establishment and growth stage of the experimental population normally would not influence the overall status of the California sea otter for ESA purposes since this component of the recovery plan would have been satisfied upon the experimental population becoming established. However, if a catastrophic event were to decimate all or a large part of the parent population, the size of the experimental population would be a factor in determining whether or not the California sea otter should remain listed as "threatened" or reclassified as "endangered."

4. Carrying capacity. This represents the point at which the experimental population reaches the carrying capacity of its habitat, defined as an ecological state in which the numbers of animals remain relatively constant and in balance with the available food supply, also referred to as "equilibrium density." It is expected that, as the new population approaches carrying capacity, the growth rate would decline, the dispersal tendency of some otters may increase, natural juvenile mortality would accelerate, the time spent foraging by the otters would increase significantly, and the diet would become measurably more diversified. At this point, the growth rate of the colony might have slowed or even stopped.

Attainment of an equilibrium density in the experimental population would not necessarily influence the legal status of the southern sea otter population for purposes of ESA, beyond that which occurred at the time the new colony was deemed established. This is because the initial establishment of the experimental population would be sufficient to consider delisting if the other recovery criteria have been met.

To summarize the relationship of translocation to the status of the California sea otter pursuant to ESA, this relationship would be time-phased and would vary with the stages of growth of the translocated population. The recovery plan states that in order for recovery and delisting from the Federal list of endangered and threatened species to occur, a number of criteria must be met. A key one is that at least one additional population must be established outside the current range but separated from the existing population such that it would not be possible for a large oil spill to contact and decimate both the new colony (or colonies) and the existing population. The definition of "established" is pivotal to a description of the relationship to the

population as a whole. The experimental population would not be sufficient to consider delisting under ESA until the Service deemed the new population to be established. The minimum time required would be five years after the actual translocation begins, and it could be longer, depending primarily on the recruitment and mortality rates and the degree to which the experimental otters remain within the translocation zone. Both the transplant and initial growth and reestablishment stages must occur before the new population could be judged to be established. During these two stages, the experimental population would have no influence on, nor help to improve, the legal status of the southern sea otter under ESA, although during the initial growth and establishment stage the number of otters within the translocation zone would be added to those in the donor population for purposes of conducting ESA section 7 consultations if there were at least as many otters in the zone as were moved there during the transplant stage and if successful reproduction was occurring in the translocation zone.

Once the new population is deemed established, removal of the southern sea otter from the threatened list could be considered, although delisting would depend on the degree to which other recovery criteria have also been met. The Service would conduct a formal status review relative to the donor population near the beginning of translocation, and again conduct a status review at the time the experimental population was deemed established. This would provide the basis for evaluating the requisite factors to be considered prior to delisting a species.

Subsequent to the population becoming established as a viable breeding colony, it is anticipated that it would enter a growth stage, during which it would grow toward carrying capacity. During the post-establishment and growth stage, and at carrying capacity, the experimental population normally would influence the legal status (pursuant to ESA) of the overall California population no more than when it was initially deemed to be established. One potential deviation from this would be if the parent population were to be substantially diminished; should that occur, the size of the experimental population at that point would have a bearing on whether the remaining sea otters would remain classified as threatened or reclassified as endangered, or relisted if a delisting action had previously been completed.

Relationship to Future ESA Section 7 Determinations

The discussion, terms, and conclusions described under the previous section are directly applicable to this section. ESA section 7 consultations conducted relative to the experimental population itself would depend on the legal authority under which the translocation might take place. If conducted under section 10(j) of the ESA, the proposed experimental population would be designated "non-essential" and, therefore, formal consultations would not be required. If amendments to ESA passed by the House of Representatives in July 1985 (H.R. 1027) become law, then formal section 7 consultations would be required relative to the proposed experimental population (prior to delisting), regardless of its size or growth stage for all Federal actions that are proposed to be undertaken within the translocation zone that are not defense-related and that may affect the experimental population. Within the management zone, no formal consultations would be required for actions that may affect the experimental population, but pursuant to section 7(a)(4) the Federal agency proposing the action would be required to informally confer with the Service on projects that are likely to jeopardize the continued existence of the southern sea otter.

During the transplant and initial growth and reestablishment stages, it would not be known if the experimental population would eventually take hold and become a viable, self-perpetuating unit. Therefore, it could not be considered as available for restoring a damaged parent population, and thus would not contribute to recovery. However, for section 7 purposes during the growth and reestablishment stage the numbers associated with the experimental population would be added to those of the parent population if they were at least equal to the number originally translocated to the translocation zone and successful reproduction was occurring. For example, if there were 100 sea otters in the translocation zone, at least some of which were reproducing successfully, and 1,400 in the parent population, the total population of California sea otters would be considered to equal 1,500 for purposes of evaluating a Federal project through section 7 consultation. Although the estimated size of both the parent population and experimental population would be combined for section 7 purposes, the reduction in the likelihood of a jeopardy opinion during the reestablishment stages would probably be only a small fraction and probably not quantifiable. When considering adverse effects and incidental take associated with a proposed project and cumulative effects that may affect the donor population, the number of otters removed from the donor population for translocation purposes would have to be taken into consideration for projects proposed during the transplant stage. However, since only a maximum of 70 would be translocated the first year, and only small supplements taken if needed during subsequent years, there would not likely be any measurable effect on section 7 opinions relative to the parent population after the first year of the translocation.

During the transplant and initial growth and reestablishment stages (prior to becoming established), and after becoming established, the transplanted otters within the translocation zone would be considered as a part of the parent population for section 7 purposes relative to projects that may affect the experimental population. Thus, any impacts caused by a proposed Federal action on the experimental population would be viewed as affecting the species as a whole.

Once the experimental population became established, but prior to the formal delisting of the southern sea otter, the existence of the experimental population would affirmatively influence determinations of jeopardy and non-jeopardy, and it would be considered part of the overall southern sea otter species for section 7 purposes in direct proportion to its size. For example, if the experimental population numbered 300 and the donor population 1,300, for section 7 purposes the southern sea otter population would number 1,600, and the projected impacts from the project would be based on the proportion of the 1,600 that could be affected. In addition to simply adding the sizes of both the donor and experimental populations together, the experimental population would also be available to annually contribute at least 20 mostly immature otters for restoring a damaged donor population. This potential contribution would be factored into a section 7 biological opinion in its assessment of impacts of the proposed Federal project and the time required for the donor population to recover itself from the expected impacts of the Federal project. The fact that two viable, geographically separate populations existed would reduce the likely extent of impacts from the proposed Federal action on the species as a whole and,

thus, affect determinations of jeopardy and non-jeopardy pursuant to section 7.

With regard to determinations of Jeopardy or non-jeopardy, as the experimental population grows toward the maximum number that its habitat can support, i.e., carrying capacity, the likelihood of jeopardy determinations for Federal actions would decrease proportionally for comparable projects with comparable types of impacts. Thus, there would be an inverse relationship between the size of the experimental population (after the transplant stage) and the likelihood of jeopardy determinations associated with section 7 consultations on either the parent or the experimental population. Figure C.2. graphically describes this hypothetical relationship.

BILLING CODE 4310-55-M

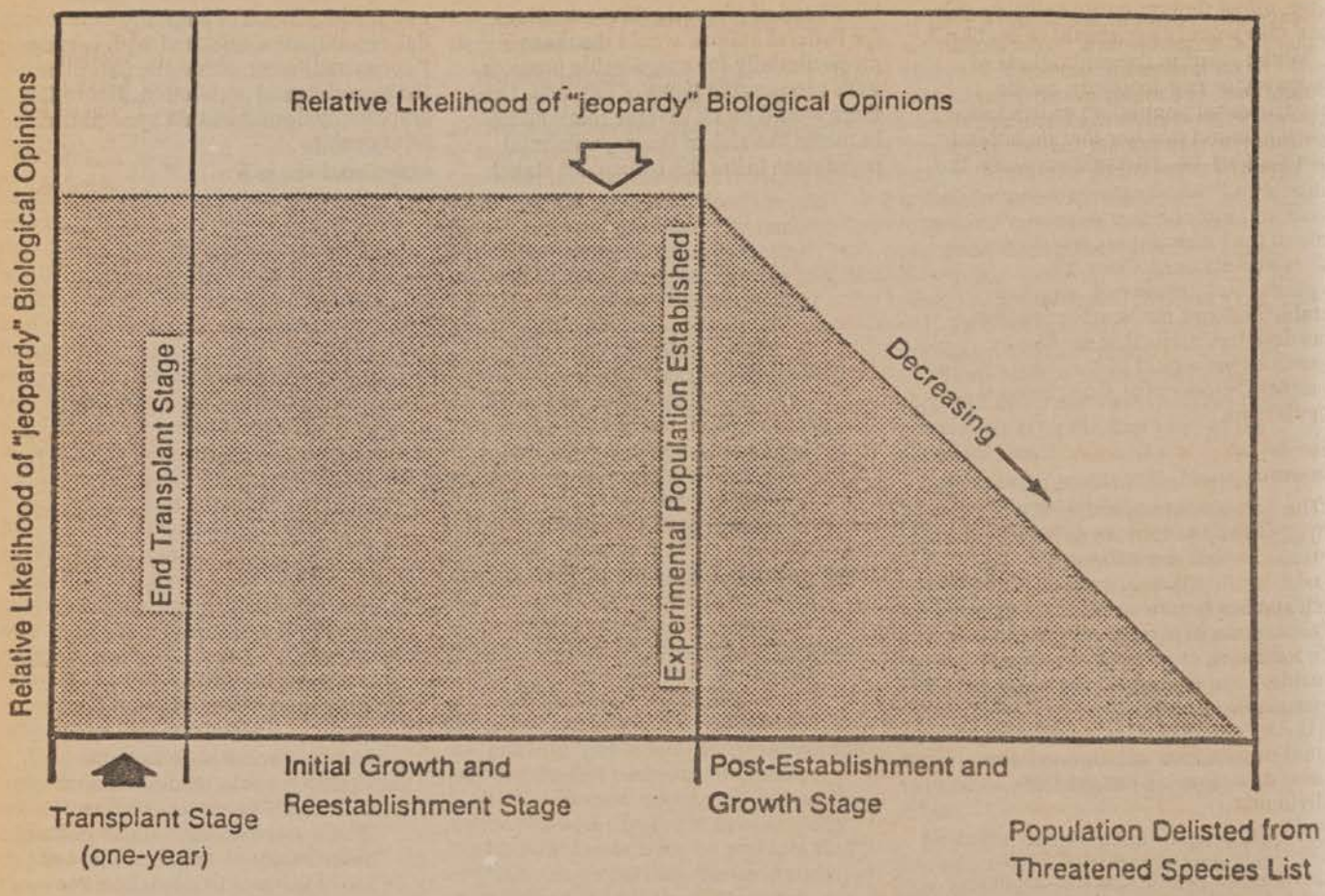


Figure C.2.

Hypothetical relationship between establishment and growth of an experimental population of southern sea otters and the relative likelihood of "jeopardy" Biological Opinions being rendered under the Endangered Species Act Section 7 consultation process.[1,2]

[1]Length of each stage on the horizontal axis does not necessarily represent relative time.

[2]Actual Biological Opinions rendered would be contingent upon the magnitude of impacts expected to result from the specific project and the current status and trend of the parent (donor) population.

BILLING CODE 4310-55-C

However, the status of the experimental population is not the only factor that would be considered in section 7 evaluations. The status of the donor population, as well as the baseline environmental or population threats at the time and cumulative impacts of future non-Federal actions expected to occur and affect either population at the time of the consultation, would also be taken into account. Once the experimental population became established and the southern sea otter was delisted, no further section 7 consultations would be required relative to either the parent or experimental populations.

Translocation as a Conservation Measure

The Service is required, under section 10(j)(2)(A) of the ESA, to determine that a translocation of southern sea otters would "further the conservation of" such species before authorizing their release as an experimental population. The following criteria must be considered in making such a determination:

(1) Any possible adverse effects on extant populations of [southern sea otters] as a result of removal of individuals . . . for introduction elsewhere;

(2) The likelihood that any such experimental population will become established and survive in the foreseeable future;

(3) The relative effects that establishment of an experimental population will have on the recovery of the species; and

(4) The extent to which the introduced population may be affected by existirg or anticipated Federal or State actions or private activities within or adjacent to the experimental population area. 50 CFR 17.81(b). The previous discussion on the relationship of the success of a translocation to the ultimate recovery of southern sea otters clearly shows that the proposed action would further the conservation of the subspecies; the following discussion explains the basis for the Service's finding in accordance with the four regulatory criteria.

Although a short-term reduction in the size of the parent population of southern sea otters would result as a consequence of translocation, any adverse effects of removal of no more than 70 mostly immature otters the first year and only supplemental removals in subsequent years if needed would be temporary and diminished by natural growth and expansion of the parent population, and would be outweighed by the achievement of a primary recovery criterion that could result from a successful translocation. The short-term reduction in size of the existing (parent) population would be proportionate to or less than the numbers translocated depending on the degree to which the removal of animals compensates for some level of natural mortality in the parent population. However, the numbers, sex and age of otters removed would be carefully selected to avoid any lasting effects on the parent population. Otters would be individually caught, removed and then translocated in small groups. Up to 70 animals will be translocated the first year, with only minor supplemental translocations in subsequent years, if necessary, to help ensure that the translocated population is successfully established. The number to be taken in any one year is less than the normal recruitment rate of the population. As designed in the translocation plan, monitoring of the parent population as well as the experimental population should determine the success of the first year's effort, subsequent year's effort and the effect(s) on the parent population. The program would be modified or terminated if new information indicates that continuing the project as proposed may be adverse to the health and viability of the parent population of southern sea otters (*e.g.*, the parent population is diminished by some catastrophic event prior to the transplant stage being completed).

The Service has determined that the proposed translocation would not result in significant adverse effects on the parent population. The impacts and risks associated with translocation must be weighed against the threat of catastrophic oil spills and the associated risks to the parent population if the proposed action is not undertaken. If the proposed translocation is successful, one outcome would be the establishment of a new colony of southern sea otters, which would ameliorate the species' present vulnerability to oil spills that, if they occurred, could jeopardize the continued existence of the southern sea otter.

There is a strong likelihood that an experimental population of southern sea otters released at San Nicolas Island would become established within 10 years after translocation was begun, and possibly in as few as 5 years. Current information indicates that necessary habitat requirements exist around San Nicolas Island to support a viable breeding colony of sea otters, and, although further field research would be of benefit in assessing particular habitat needs and population dynamics of a translocated population, the Service believes that the prospects for a successful translocation are excellent.

Since 1965 translocation of Alaskan sea otters has been successfully used for restoration purposes in southeast Alaska, northern Washington, and the Canadian Province of British Columbia. Although early efforts to translocate Alaskan otters to St. George Island (Pribilof Islands) failed, their failure is attributed mainly to inexperience in transportation, care, and limited knowledge of physiological requirements of sea otters and the harsh ice conditions that occurred around the Island after translocation was carried out. The procedural problems have since been rectified (via research studies and modification in care and transportation techniques) as illustrated by subsequent, successful releases in other areas. Alaskan sea otters were successfully released in Oregon; however, subsequent monitoring studies noted a decline in number (although pupping had occurred) and a concurrent movement of at least some of the animals northward. These animals may have been recruited into translocated populations of Alaskan otters to the north. The Service has evaluated past translocation success in developing procedures to maximize the likelihood of successful release and establishment of southern sea otters. Effective, humane techniques for capturing, relocating and releasing sea otters now exist. The Service anticipates that translocation and colony establishment would likely occur with little or no abnormal mortality.

The preceding discussion on the effects of translocation on the recovery of southern sea otters clearly shows that the establishment of an experimental population of otters is essential to the recovery of the species. The factors outlined earlier in the preamble, in the section entitled "Effects on Recovery and ESA section 7 Determinations," have been considered by the Service in reaching the conclusion that the establishment of a new sea otter colony—one that is not subject to the same risk of loss faced by the parent population from a catastrophic oil spill—would improve the recovery potential for the southern sea otter.

Lastly, although some Federal, State, and private activities on and near San Nicolas Island could affect the experimental population, these impacts are expected to be minor, if they occur at all. Appropriate measures are proposed to protect the translocated otters from more serious threats. Despite the fact that the experimental population would not be risk-free, the

Service finds that, after balancing all relevant factors, the proposal to translocate, if implemented, would further the conservation of southern sea otters.

San Nicolas Island is within the boundary of the Southern California oil and gas outer continental shelf (OCS) lease offering area (Pt. Buchon to the California-Mexico border). The Department of the Interior, Minerals Management Service, has offered lease sales for tracts in this general area in 1966, 1968, 1975, 1979, 1982, and 1984. The next proposed sale that could include the San Nicolas Island area is scheduled for 1988. If tracts around the Island were leased, it is unlikely that development would occur before 1991 since an exploratory program would be conducted first to determine if any recoverable reserves are present. The oil and gas industry has expressed some interest in the general area (*i.e.*, the outer banks and basins); however, tracts offshore San Nicolas Island have been regularly deleted from previous sales to avoid potential military (Navy) conflicts. Naval activities on and around San Nicolas Island include automated tracking of missiles and submarines with some infrequent nearshore field exercises that involve firing of live ammunition in limited areas. Because the Service will coordinate with the Navy in developing a Memorandum of Understanding for operations on the Island as well as entering into informal conferral on Navy activities pursuant to section 7(a)(4) of the ESA, the Service believes military activities would not pose significant threats to a reintroduced population. The closest blocks with active leases are located about 30 miles northwest of San Nicolas Island. Deletions are made on a lease sale-by-lease sale basis and, therefore, withdrawal of tracts around the Island from future sales is not a certainty. Oil development in waters immediately surrounding San Nicolas Island could significantly affect the introduced colony if an oil spill were to occur, but in view of the conflict between OCS development and military activities in the area and the outcomes of previous lease sales around San Nicolas, it is doubtful that development in the immediate vicinity will occur in the foreseeable future. If the translocation would proceed under provisions of H.R. 1027, proposed oil development plans within the translocation zone would be subject to formal ESA section 7(a)(2) consultation with the Service, a requirement that would likely ensure that the development would not jeopardize the continued existence of the species and would minimize any possible incidental take. If translocation proceeds under ESA section 10(j), informal conferral with the Service would be required under section 7(a)(4) of ESA. To date, there has been no interest expressed by the State to lease tidelands around San Nicolas Island for oil development.

A State-controlled action that may affect southern sea otters is the setting of commercial gill and trammel fishing nets in sea otter habitat. Sea otters are occasionally incidentally entangled and drowned in large-mesh set nets that are typically used to catch halibut. Within the present range of the southern sea otter, mortality in these nets has, until recently, resulted in the average annual loss of about 6 percent of the population (an average of 80 otters per year, 1982–84). The effect this activity would have on a reintroduced colony is expected to be minimal because the State has taken a position that areas where such incidental taking of sea otters might occur would be closed to fishing with this type of gear. In view of previous actions by the CDFG and State Legislature, it is reasonable to believe that the State would close any area where sea otters were translocated out to at least 15 fathoms (the greatest depth that Southern Sea Otter's normally inhabit) or farther if necessary to eliminate sea otter entanglement. Enforcement of such closures would be carried out by State agents, and Service agents would enforce the prohibition against incidentally taking sea otters around SNI. If the State did not close the portion of the translocation zone that otters would inhabit to such fishing activities, the Service would still enforce the prohibition against incidental take.

It also is important to recognize that an unknown number of southern sea otters in their present mainland range are illegally shot annually. Sea otters off San Nicolas Island would be vulnerable to this malicious act if specific measures were not taken to prevent it. Although no individuals have yet been convicted for shooting otters in the currently occupied range, the relatively small size, isolation, and difficult access to San Nicolas Island, and the intense research, monitoring and law enforcement protection effort designed for this translocation should minimize or eliminate the likelihood that otters would be illegally taken there.

Determination of Essentiality

Section 10(j)(2)(B) of ESA and 50 CFR 17.81(c)(2) require that, before authorizing the release of any experimental population, the Secretary shall identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of any endangered or threatened species in the wild. (Note: This determination is required under the provisions of ESA section 10(j) but not under H.R. 1027. If H.R. 1027 should ultimately be enacted, this determination will be deleted from the rule). Under 50 CFR 17.83, any experimental population (1) determined not to be essential to the survival of that species, and (2) not occurring within any unit of the National Park System or the National Wildlife Refuge System, shall be treated for purposes of section 7 (other than subsection (a)(1) thereof) as a species proposed to be listed under the ESA as a threatened species. Any experimental population that either (1) has been determined to be essential to the survival of that species, or (2) occurs within any unit of the National Park System or National Wildlife Refuge System shall be treated for purposes of section 7 of the ESA as a threatened species. Any biological opinion prepared pursuant to section 7(b) of the ESA and any agency determination made pursuant to section 7(a) of the ESA shall consider any experimental and nonexperimental populations to constitute a single listed species for the purposes of conducting the section 7 analyses. Thus, sea otters within a "nonessential" experimental population would be covered by the informal conference requirement of section 7(a)(4) and the conservation provisions of section 7(a)(1). On the other hand, an "essential" experimental population receives full section 7 protections.

The translocated population of southern sea otters at San Nicolas Island is proposed to be designated as a nonessential experimental population according to the provision of section 10(j)(2)(B) of ESA. The Service believes that the nonessential status is appropriate because of evidence that the rate of take of sea otters in commercial gill and trammel nets, which has been substantial in recent years, has been significantly reduced, thus a population growth trend in the parent population is expected to result. Evidence that this source of mortality has been significantly reduced is based on the actions taken by the California Legislature in May 1985, combined with actions taken prior to that date, that have permanently closed to large-mesh gill and trammel set net fishing areas of the sea otter's range in California to a depth of 15 fathoms. Based on observations since this closure, the rate of sea otter entanglement appears to

have been reduced by about 40 percent from the rate prior to the closure. Additionally, the Director of the CDFG twice during 1985 invoked additional temporary emergency measures designating a 20-fathom closure of this fishery in response to observations that some otters were being entangled in nets set outside of the legislatively closed area. The State Legislature is presently considering a closure out to 20 fathoms for portions of the State Sea Otter Refuge where additional otter drownings have been observed. The Service believes that the record of past actions by the State indicates that future actions will also be taken if the existing closures prove to be inadequate to reduce this source of mortality to a number nearing zero. The extent of this problem and measures taken to eliminate these losses of sea otters in gill and trammel nets have been described previously.

Based on measures to eliminate this mortality the population should again show a 4–5 percent average annual growth rate. With such a growth rate, the removal of up to 70 animals the first year plus subsequent, smaller removals if needed over a 3 to 5 year period or possibly longer is not likely to adversely affect the continued existence and viability of the parent population. Available information indicates that release of an experimental population in nearshore waters around San Nicolas Island, California, would further the conservation of the species throughout its range.

Public Comments Solicited

The Service intends that any final rule based on this proposal be as effective and accurate as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule, or the DEIS associated with this proposal, are hereby invited from the public, concerned government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible, including any literature citations which support the comment.

In accordance with 50 CFR 1781(d) concerning consultation and coordination with the State wildlife agency and landholders that may be affected by the establishment of an experimental population, the Service has made extensive efforts to consult with and seek input from the public and affected governmental agencies. Public scoping meetings were held in three California locations on July 23 and 25 and October 4, 1984, to seek public input on issues and receive information that should be considered in preparing the Draft Environmental Impact Statement and this proposed rule. An Interagency Project Review Team (IPRT) comprised of agencies involved in or affected by the proposed translocation was established and was provided opportunity to review preliminary drafts of the DEIS and proposed rule and provide comments and suggestions. Meetings of the IPRT were officially announced and opened to the public and representatives of major interest groups and other members of the public participated. Members of the public who so requested were also given opportunity to review and comment on preliminary drafts of the DEIS and proposed rule. Three hearings will be held during the public comment period on the DEIS and proposed rule, two in California and one in Oregon, to provide opportunity for input by affected parties. Additional meetings will be held as needed.

Notice of Permit Applications

In accordance with section 104 of the Marine Mammal Protection Act, 16 U.S.C. 1374, and section 10(c) of the ESA, 16 U.S.C. 1539(c), the Service gives notice that it intends to apply for scientific research permits under both the MMPA and ESA, and for a permit to establish and maintain an experimental population under the ESA, in order to carry out its proposal to translocate and contain southern sea otters around San Nicolas Island. Interested parties are invited to submit written data, views, or arguments with respect to the applications within 90 days of the date of this notice to the address indicated herein. Information received by the Service as part of these applications will be available for public review at every stage of the permit issuance process.

National Environmental Policy Act (NEPA)

A Draft Environmental Impact Statement under NEPA is now available to the public at the Regional Office and Office of Sea Otter Coordination, U.S. Fish and Wildlife Service, at the address listed above.

Formal Consultation

As required by section 7(a)(2) of the ESA, the Service has initiated formal consultation on this proposed translocation of southern sea otters to San Nicolas Island. No final decision will be made on the proposal until a biological opinion is received and considered.

Executive Order 12291, Paperwork Reduction Act and Regulatory Flexibility Act

The Service has determined that this is not a major rule as defined by Executive Order 12291, that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and that the rule, as proposed, does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These conclusions were reached after conducting an analysis that is documented in a Determination of Effects of Rules, which is on file and available for public review at the address listed under "For Further Information Contact."

The proposed translocation of southern sea otters to San Nicolas Island, regardless of the legal scenario that exists for the action, may cause economic impacts to commercial and sport fisheries; oil and gas exploration, development and production; mariculture; and commercial kelp harvest. However, the total economic impacts of the proposed action, on an annual basis, will be substantially less than $100 million, and there would not be a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions as a result of the proposal. Lastly, the proposed rule does not generate significant adverse effects to competition, employment, investment, productivity, innovation, or to the ability of domestic enterprises to compete with foreign enterprises in domestic or international markets.

Literature Cited

Ames, J.A., R.H. Hardy, and F.E. Wendell. 1983. Tagging materials and methods for sea otters, *Enhydra lutris*. Calif. Fish and Game 69:243–252.

California Department of Fish and Game. 1976. A proposal for a sea otter protection and research, and request for return of management to the State of California. Unpubl. report. Jan. 1976. 2 vol.

Hofman, R.J. (Ed.). 1985. Workshop to assess possible methods for regulating the distribution and movements of sea otters. U.S. Marine Mammal Commission. Rept. No. MMC–84/05. Washington, D.C.

Jameson, R.J., K.W. Kenyon, A.M. Johnson, and H.M. Wight. 1982. History and status of translocated sea otter populations in North America. Wildl. Soc. Bull. 10(2):100–107.

Kenyon, K.W. 1969. The sea otter in the eastern Pacific Ocean. N. Amer. Fauna 68:1–352.

Authors

The primary authors of this proposed rule are Wilbur Ladd and Carl Benz, Office of Sea Otter Coordination, U.S. Fish and Wildlife Service, Room E–1818, 2800 Cottage Way, Sacramento, California 95825 (916/978–4873, FTS 460–4873); Michael Young, Office of the Solicitor, Department of the Interior, Room 6547, 18th & C Streets, NW., Washington, DC 20240 (202/343–2172, FTS 343–2172); Ronald Swan, Office of the Regional Solicitor, Department of the Interior, 500 NE. Multnomah Street, Suite 607, Portland, Oregon 97232 (503/231–2143, FTS 429–2143).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Marine mammals, Fish, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et. seq.*).

2. It is proposed to amend § 17.11(h) by revising the entry for "Otter, southern sea" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Otter, southern sea	*Enhydra lutris nereis*	West Coast, USA (WA, OR, CA) south to Mexico (Baja California).	Entire, except all areas subject to U.S. jurisdiction south of Pt. Conception, CA (34°26.9' N. Latitude).	T	21	NA	NA
Do	do	do	All areas subject to U.S. jurisdiction south of Pt. Conception, CA (34°26.9' N. Latitude).	T[XN]		NA	17.84(d)

3. It is proposed to amend § 17.84 by adding paragraph (d) to read as set forth below:

§ 17.84 Special rules—vertebrates.

* * * * *

(d) Southern sea otter (*Enhydra lutris nereis*). (1) *Definitions.* The definitions set out in § 17.3 [and § 17.80] apply to this paragraph (d). For purposes of this paragraph—

(i) The term "defense-related agency action" means an agency action proposed to be carried out directly by a military department, which does not have as its intended purpose the taking of southern sea otters. For purposes of this definition, the United States Coast Guard is not a military department.

(ii) The term "management zone" means that area delineated in paragraph (d)(5)(i) of this section which surrounds the translocation zone and separates the translocation zone from the existing range of the parent population and adjacent range where expansion of the parent population is necessary for the recovery of southern sea otters.

(iii) The term "member of the experimental population of southern sea otters" includes any southern sea otter, alive or dead, found within the translocation zone or the management zone, and any part or product of any such southern sea otter.

(iv) The term "parent population" means the population of southern sea otters existing along the central California coast from which otters for establishment of the experimental population of otters were taken.

(v) The term "translocation zone" means the area delineated in paragraph (d)(4)(i) of this section within which an experimental population of southern sea otters is released and contained.

(vi) The term "established experimental population of southern sea otters" means a translocated population that meets the following criteria: An estimated combined minimum of 150 healthy male and female sea otters residing within the translocation zone, little or no emigration into the management zone occurring, and a minimum annual recruitment to the experimental population in the translocation zone of 20 sea otters for at least 3 years of the latest 5-year period.

(2) *Description of experimental population.* The experimental population of southern sea otters shall include all southern sea otters found within the translocation zone or the management zone. The Service will translocate no more than 70 southern sea otters during the first year, supplemented as necessary with up to 70 otters per year in subsequent years from the parent population to the translocation zone. Although a maximum of 250 southern sea otters may be moved from the parent population in order to establish the experimental population in the translocation zone, it is not likely that supplemental translocation will involve more than small numbers of southern sea otters in years subsequent to the initial translocation. Of the animals translocated each year, up to 20 will be adults, at a sex ratio of about 3:1, females to males. The remainder will be weaned, immature animals. The sex ratio of the immature otters selected for translocation will be approximately 4 females to 1 male.

(3) *Translocation process.*—(i) *Capture.* Capture locations will be selected primarily from the southern third of the range of the parent population. Sea otters will be captured between early August and mid-October using: (A) Diver-held devices, (B) dip nets, (C) surface entangling nets, or (D) other methods which may be proven to be safe and effective in the future. All captured otters will be tagged and examined by a veterinarian experienced in treating marine mammals. Prior to each translocation effort, a maximum of 30 otters will be captured and implanted with radio transmitters for observation and study of behavior. Up to 15 of these animals will be recaptured the following year and translocated.

(ii) *Transport.* All animals to be translocated will be held at the capture sites, or in specially constructed holding facilities nearby, prior to their movement to the translocation zone. Access to and care of animals will be restricted to Federal and State personnel and designated agents directly involved with the translocation. Each captured animal will be placed in a carrying cage and transported by truck to the local airport, from which point they will be flown to the translocation zone. From there they will be trucked to the release site. No fewer than 20 animals will be moved to the translocation zone at a single time.

(iii) *Release.* The animals will be held for up to five days in secured floating pens at the release site. No more than 10 individuals will be held in any pen, and males and females will be held separately. The animals will be released passively by opening the floating pens and allowing them to leave at will.

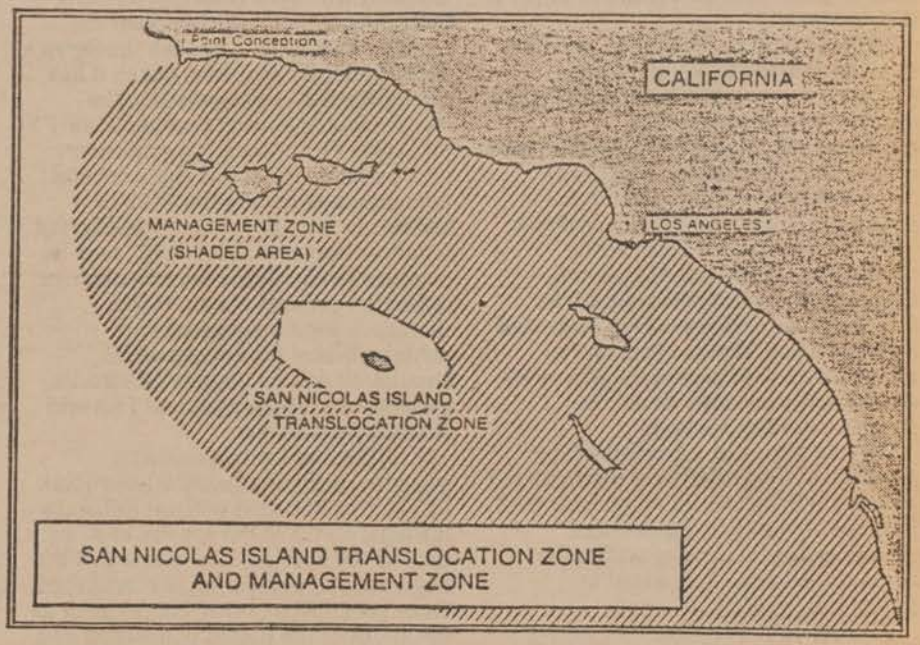
(iv) *Monitoring.* Monitoring will be conducted on both the parent population and the experimental population by State and Federal biologists and their designated agents. Monitoring the parent population will be done to determine the effects of removal of otters on the growth and range expansion of the parent population. Monitoring of the parent population will continue at least through the translocation period and into the foreseeable future. Monitoring of the experimental population will begin with the first release of translocated otters and will continue at least until either the new population reaches the carrying capacity of the habitat and establishes an equilibrium density or the translocation is determined to have failed. Monitoring will include intensive studies of changes in key components of the nearshore ecosystem of the translocation zone including benthic organisms, kelp and finfish. Monitoring, using ground and aerial observations, will also include intensive observation and documentation of the movements, distribution, foraging and reproductive behavior, dispersal tendencies, growth and reproductive rates, prey selection, and social interactions of sea otters in the experimental population. Comparisons of the results of monitoring the experimental population will then be made with members of the parent population that are implanted with radio transmitters.

(v) *Protection.* At least one special law enforcement agent and other enforcement personnel, as needed, will be specifically assigned, at least for the initial three to five-year period after the actual translocation of animals, to conduct patrols and prevent illegal taking of southern sea otters in the translocation zone. Cooperative enforcement arrangements will be developed with other agencies having law enforcement activities in the area such as the U.S. Coast Guard, National Marine Fisheries Service, California Department of Fish and Game, U.S. Navy, and National Park Service to assist with protecting the experimental population.

(4) *Translocation Zone.* (i) There is established a translocation zone for southern sea otters comprised of San Nicolas Island, Begg Rock, and the surrounding waters within the following coordinates:

N. Latitude	*W. Longitude*
33°27.8'/119°34.3'	
33°20.5'/119°15.5'	33°13.5'/119°11.8'
33°06.5'/119°15.3'	33°02.8'/119°26.8'
33°08.8'/119°46.3'	33°17.2'/119°56.9'
33°30.9'/119°54.2'	

(ii) A map depicting the translocation zone is set forth below:



SAN NICOLAS ISLAND TRANSLOCATION ZONE AND MANAGEMENT ZONE

Translocation Zone Coordinates (Latitude/Longitude).

33°27.8'/119°34.3';33°20.5'/119°15.5';
33°13.5/119°11.8'; 33°06.5'/119°15.3';
33°02.8/119°26.8'; 33°08.8'/119°46.3';
33°17.2/119°56.9'; 33°30.9'/119°54.2'.

Management Zone:

All waters south of Point Conception(34°26.9' N.Latitude).

(iii) *Prohibitions.* Except as provided in paragraph (d)(4)(iv), all of the provisions in § 17.21 (a) through (f) shall apply to any member of the experimental population of southern sea otters within the translocation zone.

(iv) *Exceptions.* The prohibitions of paragraph (d)(4)(iii) shall not apply to:

(A) Any act by the Service, the California Department of Fish and Game, or an authorized agent of the Service or the California Department of Fish and Game that is necessary to effect the relocation or management of any southern sea otter under the provisions of this subsection;

(B) Any taking of a member of the experimental population of southern sea otters that is incidental to, and not the purpose of, the carrying out of a defense-related agency action as

defined in paragraph (d)(1)(i) of this section; or

(C) Any act authorized by a permit issued under § 17.32.

(5) *Management Zone.* (i) There is established a management zone for southern sea otters comprised of all waters, islands, islets, and land areas seaward of mean high tide subject to the jurisdiction of the United States located south of Point Conception, California (34°26.9' N. Latitude), except for any area within the translocation zone delineated in paragraph (d)(4)(i) of this section.

(ii) A map depicting the management zone is set forth in paragraph (d)(4)(ii) of this section.

(iii) *Prohibitions.* Except as provided in paragraph (d)(5)(iv), all of the provisions in § 17.21 (a) through (f) shall apply to any member of the experimental population of southern sea otters within the management zone.

(iv) *Exceptions.* The prohibitions of paragraph (d)(5)(iii) shall not apply to:

(A) Any act by the Service, the California Department of Fish and Game, or an authorized agent of the Service or the California Department of Fish and Game that is necessary to effect the relocation or management of any southern sea otter under the provisions of this section;

(B) Any taking of a member of the experimental population of southern sea otters that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity within the management zone delineated in paragraph (d)(5) (i); or

(C) Any act authorized by a permit issued under § 17.32.

(6) *Containment.* The following containment measures, listed in order of preference, will be employed to prevent significant emigration of southern sea otters from San Nicolas Island and occupation of habitat within the management zone:

(i) *Capture of animals within the management zone for return to the experimental population or to the range of the parent population using non-lethal means.* If verified and repeated sightings of one or more sea otters are made at any location within the management zone for at least one week, field crews will be mobilized to capture and remove the otter(s) from the zone. Capture will be done by experienced State and/or Federal personnel or other designated agents, using one or more of the same techniques used in the translocation effort, such as (A) diver-held devices; (B) surface entangling nets; (C) dip nets; or (D) other effective methods which may be developed for capturing sea otters in the future. Animals either will be flown or moved by air-conditioned van to the release site.

(ii) *Artificial reduction of fecundity for some sea otters within the experimental population.* [Reserved]

(iii) *Selective or random, non-lethal removal of members of the experimental population within the translocation zone.* Containment measures will be administered by the Fish and Wildlife Service's Office of Sea Otter Management and Coordination (OSOMC), in consultation and cooperation with the California Department of Fish and Game. The OSOMC will work closely with State biologists to remove otters from the management zone. Although the Service cannot obligate funds for which it has not received an appropriation, the Service has requested funding in the FY–87 budget for research, management, and containment of this experimental population. Grants to the State of California from the limited unobligated balances under 16 U.S.C. 1535, may be employed to facilitate the containment measures outlined above. Public donations for management and containment of the experimental population will be accomplished with assistance from the National Fish and Wildlife Foundation.

(7) *Effects of translocation on recovery and interagency cooperation.* (i) The translocation will not influence the legal status of the species until such time as the Service determines that the experimental population is established. Once established, other factors such as the status of the parent population and attainment of other recovery goals will be considered. If the experimental population becomes established and the other recovery goals identified in the recovery plan for the southern sea otter are attained, the southern sea otter will be eligible for consideration for delisting in accordance with the requirements of 50 CFR 424.11(d). If a catastrophic event were to significantly diminish the parent population, the size of the experimental population would be a factor in determining whether or not the southern sea otter should remain listed as "threatened" or reclassified as "endangered," or if relisting should be considered if a delisting action had been completed.

(ii) In determining the likelihood of jeopardy or non-jeopardy opinions for proposed Federal actions that "may affect" southern sea otters, the probability of jeopardy determinations would decrease proportionally for comparable projects with comparable types of impacts as the experimental population grows from the point of being established toward the maximum number that its habitat could support, *i.e.*, carrying capacity. Thus, there would be an inverse relationship between the size of the experimental population (after being determined to be established) and the probability of jeopardy determinations associated with section 7 consultations under the Endangered Species Act for either the parent or the experimental population. However, the status of the experimental population is not the only factor to be considered in section 7 evaluations. The status of the parent population, as well as the cumulative impacts and effects of the action on either population, would also be taken into account. In addition to considering the size of the experimental population, the contribution that such population could make toward helping restore a damaged parent population would also be a factor that would be considered during section 7 evaluations.

(8) *Determination of essentiality.* Based on the best scientific and commercial data available, the southern sea otter population identified in paragraph (d)(2) of this section is found not to be essential to the continued existence of the species in the wild. Since their inception in 1982, standardized biannual counts of the southern sea otter population indicate that the population has not grown over that time period, and previous surveys conducted by State personnel indicate the population has probably not grown at least since 1976. During the same period, fishermen were incidentally taking southern sea otters in gill and trammel nets set within the 15 fathom contour over parts of the sea otter range. Based on observational data of incidental take in set nets (1982–1984) State biologists reported that this fishing activity resulted in an estimated average annual mortality of 80 southern sea otters during that period. To eliminate this source of mortality, the State of California has enacted legislation closing the sea otter range out to a depth of 15 fathoms to the use of gill and trammel set nets having a mesh size equal to or greater than 3.5 inches. The California Legislature is considering additional restrictions on fishing activities within part of the southern sea otter's range. As a result of this permanent closure (effective May 24, 1985) and additional measures being considered, the Service believes that population growth will resume and should approach an average annual rate of 5 percent, approximating the rate estimated for the population prior to the advent of intensive gill and trammel set

net fishing. Now that the incidental take problem has been addressed for the parent population, the Service finds that the loss of the experimental population of southern sea otters identified in paragraph (d)(2) of this section would not likely reduce appreciably the likelihood of the survival of southern sea otters in the wild.

Dated: July 8, 1986.

Susan E. Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-18165 Filed 8-14-86; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Establishment of an Experimental Population of Southern Sea Otters

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; notice of hearings.

SUMMARY: The Fish and Wildlife Service (Service) has prepared a Draft Environmental Impact Statement (DEIS) for the proposed translocation and establishment of an experimental population of southern sea otters (*Enhydra lutris nereis*). The Service proposes to reintroduce southern sea otters at, and contain them in the immediate vicinity of, San Nicolas Island, Ventrua County, California for two purposes: (1) To implement a primary recovery action for a federally listed "threatened" species and (2) to obtain data for assessing translocation and containment techniques, population dynamics, the ecological relationships of sea otters and the nearshore community, and the effects on the donor population of removal of individual otters for translocation.

DATES: Comments from agencies and the public must be received by November 17, 1986. Public hearings will be conducted on the DEIS, and concurrently on a Proposed Rule published elsewhere in this issue associated with this proposal, on the following dates, times, and locations:

September 17, 1986, 6:00–9:00 p.m., City Council Chambers, City Hall, 898 Elk, Brookings, Oregon

September 22, 1986, 6:00–9:00 p.m., City Hall, Corner of Pacific and Madison Streets, Monterey, California

September 24, 1986, 6:00–9:00 p.m., Ventura Avenue Adult/Senior Center, 550 N. Ventura Avenue, Ventura, California

ADDRESSES: Questions and comments concerning the DEIS should be addressed to the Regional Director (AFA), Attention: Sea Otter comments, U.S. Fish and Wildlife Service, Regional Office, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. The DEIS comments and related materials are available for public inspection by appointment during normal business hours at the Office of Sea Otter Coordination, Room E–1818, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Mr. Wilbur Ladd at (916) 978–4873 or FTS 460–4873, or write to the Office of Sea Otter Coordination, 2800 Cottage Way, Room E–1818, Sacramento, California 95825.

SUPPLEMENTARY INFORMATION: Establishment of an experimental southern sea otter population is proposed in accordance with section 10(j) of the Endangered Species Act (ESA) of 1973, as amended, as well as Congressional directives. The DEIS describes and analyzes the environmental consequences of a translocation of up to 250 southern sea otters to one of three potential translocation sites: San Nicolas Island in Ventura County, California; coastal northern California; and coastal southern Oregon. San Nicolas Island is the preferred site. Also described are consequences of (a) no action, (b) greater protection to the existing population without translocating sea otters, and (c) translocation combined with partial containment of growth and range expansion of the existing California sea otter population.

Dated: August 5, 1986.

Wally Stanke,

Acting Regional Director.

[FR Doc. 86–18166 Filed 8–14–86; 8:45 am]

BILLING CODE 4310–55–M

Federal Register

Friday
August 15, 1986

Part III

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 405

Medicare Program; Elimination of Periodic Interim Payments for Hospitals; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-398-F]

Medicare Program; Elimination of Periodic Interim Payments for Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: With certain exceptions, we are eliminating the periodic interim payment method for inpatient hospital services for prospective payment hospitals effective with discharges occurring on or after July 1, 1987 and for all other hospitals effective with covered services furnished on or after July 1, 1987. We believe that the elimination of this method of payment will encourage hospitals to submit their bills on a more timely basis and will also allow the Medicare fiscal intermediaries to use their resources more effectively in making payments to hospitals.

EFFECTIVE DATE: This final rule is effective September 15, 1986.

FOR FURTHER INFORMATION CONTACT: John Eppinger, (301) 594–5354.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98–21) on April 20, 1983, the prospective payment system for Medicare payment of inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Excluded from this system are psychiatric, rehabilitation, and alcohol/drug hospitals and distinct part units, children's hospitals, long-term care hospitals, hospitals outside the 50 States and the District of Columbia, and hospitals paid under special arrangements such as Veterans Administration hospitals or hospitals paid under State reimbursement control systems authorized by section 1886(c) of the Act.

Under the prospective payment system, Medicare payment is made at a predetermined, specific rate for each discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The interim final rule that implemented the prospective payment system was published on September 1, 1983 in the **Federal Register** (48 FR 39752).

Prior to implementation of the prospective payment system, all providers (for example, hospitals, skilled nursing facilities, and home health agencies) were reimbursed based on the lesser of the reasonable cost of services furnished to Medicare beneficiaries or the provider's customary charges for those services. Prospective payment hospitals currently continue to be reimbursed based on reasonable cost for certain expenses incurred for activities such as training nurses and allied health professionals. In addition, hospitals and hospital units excluded from the prospective payment system and most other providers are still reimbursed on the basis of reasonable cost.

Since actual reasonable cost cannot be determined until the end of a provider's cost reporting period, an interim rate, approximately actual cost as closely as possible, is determined by the intermediaries for each provider and interim payments are made during the year. These interim payments are required by section 1815(a) of the Act, which states that we must pay a provider at least monthly during its cost reporting period, pending a final determination of cost on the basis of a submitted cost report and any necessary adjustments. After receipt of the provider's cost report, the intermediary determines what the actual reimbursement for the period should have been and a retroactive adjustment is made. The regulations that implement these policies are located at 42 CFR 405.454.

There are two methods of interim reimbursement for inpatient hospital services for hospitals excluded from the prospective payment system. One method is based on actual bills submitted by the hospital. Under this method, interim payments are calculated by applying a predetermined per diem amount to the number of Medicare patient days reflected on actual bills or by applying a predetermined percentage to the charges reflected on the actual bills submitted. The predetermined per diem amount or percentage factor applied to billed patients days or charges represents an estimate of the hospital's costs that will be incurred and is based on the hospital's previous year's costs, adjusted to ensure that the current year's rate of payment is as close as possible to the current year's costs.

Under the second method, referred to as the periodic interim payment (PIP) method, interim payments are not based on individual bills. Instead, payment is based on the estimated annual costs attributable to estimated Medicare utilization of a hospital, and equal biweekly payments are made to hospitals without regard to the submission of individual bills. PIP has been available for inpatient hospital services since 1968. It was offered to qualified hospitals as an alternative to regular interim reimbursement, which requires submission of a bill to receive payment.

With either of these interim payment methods, any overestimation or underestimation of the hospital's actual costs, to the extent not adjusted during the year, is adjusted at the time of cost report settlement.

Under the prospective payment system, hospitals are paid, for most of the Part A inpatient services they furnish, a prospectively determined amount for each discharge based on actual bills submitted. This amount constitutes final payment for each discharge claimed. Although no form of interim payment is necessary for hospitals operating under prospective payment system, we extended the option to these hospitals to elect to receive PIP when the prospective payment system was implemented in order to avoid cash flow problems in the early stages of the system. Thus, § 405.454(m) provides that prospective payment hospitals that meet the qualifications for receiving PIP set forth in § 405.454(j) may elect to receive this type of interim payment, which would be based on their estimated annual prospective payment amounts. In these circumstances, year-end reconciliation is required.

Payment for capital-related costs and those indirect medical education costs that are payable to prospective payment hospitals on a reasonable cost basis continue to be made on an interim payment basis pending a year-end reconciliation based on a cost report. These interim payments are determined by estimating the reimbursable amount for the year based on the previous year's experience and on information for the current year and dividing that amount into 26 equal payments made biweekly. In addition, the indirect teaching adjustment, if appropriate, is paid on a biweekly interim basis subject to final settlement. Biweekly payment for these costs is provided for by current regulations (§§ 405.454([m)(3) and (m)(4)) and are not considered as part of the PIP method of payment.

Although the PIP method of interim payment is not based on actual bills submitted, a PIP hospital must continue to submit bills for subsequent intermediary verification of the

accuracy of the rate, as well as recording an individual's benefit utilization. The rate is reviewed at least twice per year for hospitals paid under the prospective payment system and at least quarterly for hospitals reimbursed on a reasonable cost basis. If necessary as determined by the reviews, the rate is adjusted. Interim payments may be further adjusted at year end based on submitted cost reports.

As indicated above, our primary reason for offering PIP to hospitals paid under the prospective payment system was to ensure that hospitals would not experience cash-flow problems as they made the transition from cost-based reimbursement to prospective payment. We believed that implementation of a payment system that was new to both hospitals and intermediaries might have, in some cases, caused fluctuation or temporary interruption in payments to hospitals. Therefore, PIP was made available to qualified hospitals to ease the problems inherent in this start-up period.

Evidence indicates that the PIP method has become an increasingly needless and time-consuming burden for the intermediaries and that it results in the expenditures of considerable resources in attempting to identify and correct overpayments and underpayments. For example, because this payment method does not rely initially on submitted bills, changes in a provider's utilization are not identified as quickly as under the regular interim reimbursement method.

Eliminating PIP for all hospitals, that is, those reimbursed on the basis of reasonable costs and those subject to prospective payment, would allow intermediaries to utilize their resources more effectively to better control payments to hospitals and all other providers. Furthermore, the elimination of PIP would encourage hospitals to submit their bills on a more timely basis since hospitals receiving PIP have less incentive to bill timely than hospitals not receiving PIP. (The latter hospitals are required to submit a bill before receiving any payment.) For these reasons, in a proposed rule concerning changes to the inpatient hospital prospective payment system and Federal fiscal year (FY) 1987 rates that was published June 3, 1986 in the Federal Register (51 FR 19970), we proposed to eliminate PIP for all hospitals.

II. Provisions of the Proposed Regulations

We proposed to amend §§ 405.454(j) and (m) by eliminating PIP as an optional method of payment for inpatient hospital services furnished to Medicare beneficiaries. To allow hospitals sufficient lead time to adjust their billing practices, we proposed to eliminate PIP for prospective payment hospitals effective with discharges occurring on or after July 1, 1987 and for all other hospitals effective with covered services furnished on or after July 1, 1987. (We made an inadvertent error in the preamble to the proposed rule in stating that the elimination of PIP would be effective for all hospitals for discharges occurring on or after July 1, 1987 (51 FR 19989).) Our proposal specified that hospitals would be paid not less often than monthly, based on submitted bills for payment.

In order to alleviate the cash flow problems that certain hospitals might encounter, we proposed a new form of interim payment for hospitals subject to the prospective payment system for those cases in which a patient remains in the hospital more than 45 covered days. For these cases, we proposed that one interim payment would be made to the hospital at the rate for the DRG that results from applying the GROUPER classification to the diagnosis, procedures, and other pertinent information that are reported on the interim bill. (GROUPER is the computerized screening process used to determine the appropriate DRG for each discharge under the prospective payment system.) We stated that any interim payment made would be applied against the final payment made for the discharge.

In addition to eliminating PIP for hospitals reimbursed on the basis of reasonable cost and for prospective payment hospitals, we proposed to eliminate this method of interim payment for hospitals receiving payment under a demonstration project authorized by section 402(a) of the Social Security Amendments of 1967 (Pub. L. 90–248) (42 U.S.C. 1395b–1) or section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603) (42 U.S.C. 1395b–1 (note)). Also, we stated that we would extend this policy to those hospitals paid under State reimbursement control systems authorized by section 1886(c) of the Act and approved by HCFA. However, under the proposal, these hospitals would be permitted to use a form of interim payment similar to PIP if that type of payment is specifically approved by HCFA as a part of the demonstration or control system.

Finally, we stated that payment for direct medical education and other inpatient hospital costs excluded from the prospective payment system, with the exception of capital-related costs, would continue to be made biweekly on an interim payment basis under the provisions of §§ 405.454(m)(3) and (m)(4). The proposed rule would have revised § 405.454(m)(3) to eliminate any mention of interim payment to prospective payment hospitals for capital-related costs because we also proposed to incorporate capital-related costs into the prospective payment system effective with cost reporting periods beginning on or after October 1, 1986. However, section 206 of the Urgent Supplemental Appropriations Act of 1986 (Pub. L. 99–349), enacted July 2, 1986, extended the prohibition against including capital-related costs in inpatient operating costs until cost reporting periods beginning on or after October 1, 1987. Therefore, this final rule does not affect interim payment to prospective payment hospitals for capital-related costs.

III. Discussion of Comments

In response to the June 3 proposed rule, we received 201 timely items of correspondence that commented on our proposal to eliminate PIP. Although the majority of the commenters were hospitals or hospital systems, we also received comments from professional associations, accounting firms, a State agency, and an intermediary. Virtually all of the commenters were opposed to our proposal. These comments and our responses to them are discussed below.

Comment: A large majority of the commenters stated that the elimination of PIP will have a serious impact on the cash flow of affected hospitals resulting in a significant loss of operating capital for these hospitals. The commenters believe that without PIP, these hospitals' cash flow will be subject to problems that are outside their control, such as intermediary processing and payment time, fluctuations in patient census, and HCFA requirements that delay hospital bill submission. It is the commenters' opinion that many hospitals will be forced to borrow large amounts of money and that some hospitals may be forced to close.

Response: We realize that PIP provides an even flow of cash to hospitals and that some hospitals will experience cash flow problems once this method of payment is no longer available. However, considering the number of years most hospitals have been in business and have participated in the Medicare program, we believe that hospitals should now have the capability to bill and receive payment for services as they are furnished. We are encouraging hospitals that have not already done so to begin billing through

electronic media claims (EMC). EMCs expedite claims submission and processing because they are easier for the hospital to prepare, have fewer errors than hardcopy claims, and are automatically entered into an intermediary's processing system. We believe that the more rapid bill submittal and turn-around time associated with EMCs will tend to modify the effect of fluctuations in patient census.

With regard to intermediary processing and payment, we have issued instructions to intermediaries that require payment or denial of 95 percent of all "clean" claims within 27 days of receipt for Federal fiscal year (FY) 1986, and we will work with the intermediaries in this endeavor. We are currently evaluating what claims processing cycle is appropriate for FY 1987 and beyond.

We recognize that some of the bill submittal requirements that were implemented as part of the prospective payment system (for example, physician attestation of diagnoses) may, in some cases, delay bill submittal. However, we believe that these delays are being reduced as hospitals gain experience under that system. Finally, since PIP will not be eliminated until July 1, 1987, hospitals will have nearly a year to prepare.

Comment: Many commenters stated that since the purpose of PIP is to ensure an even cash flow, this method of payment is just as necessary now for hospitals subject to the prospective payment system as it was before that system was implemented.

Response: We agree that PIP does provide an even cash flow for both prospective payment hospitals and all other hospitals. However, we believe that hospitals have gained adequate experience in the development of effective bill processing systems and are now capable of billing timely and receiving payment on a bill basis. In addition, because hospitals can submit bills on an electronic basis (that is, EMC), they are capable of submitting claims more quickly, which further reduces their dependency on PIP.

Comment: A number of commenters noted a recent slowing down of intermediary bill processing, and many of the commenters believe that this action has been taken at HCFA's direction. Many commenters noted long delays by intermediaries in claims processing and are concerned that if PIP is eliminated, hospitals can anticipate much longer delays in receiving payment.

Response: We realize that in the past several months some intermediaries' payment cycles have lengthened because of an unanticipated increase in the volume of claims submitted and budgetary restrictions. We are taking action to address this problem.

First, as noted above, we have issued instructions to the intermediaries that require them to pay or deny 95 percent of all "clean" claims within 27 days of their receipt for FY 1986. We are currently evaluating what claims processing cycle is appropriate for FY 1987 and beyond. Second, we have released an additional $15 million to the intermediaries to expedite the processing of any bill backlogs and to assist them in processing bills timely. Finally, we will continue to work with the intermediaries to help them improve their claims processing operations.

We believe that by the time PIP is eliminated, intermediaries, particularly intermediaries that currently have longer processing and payment cycles, will be better prepared to process and pay bills on a reasonable time schedule.

Comment: Several commenters stated that there should be no elimination of PIP until intermediary standards for timeliness of claims payment are set and penalties for late payment are instituted. Some of these commenters also believe that if a delay in payment exceeds 30 days, interest should be paid on the late payment in addition to payment of the claim.

Response: As mentioned above, we are in the process of setting standards for intermediary bill processing. Instructions have been issued that require processing of 95 percent of "clean" claims within 27 days of receipt for FY 1986. We believe that most intermediaries will be able to meet this processing and payment standard. We note that during the period January through March 1986, on a nationwide basis, intermediaries processed over 91 percent of inpatient hospital claims within 30 days. We are currently evaluating what claims processing cycle is appropriate for FY 1987 and beyond.

With respect to the commenters' suggestion that interest be paid on claims for which payment is not made within 30 days, the vast majority of claims would not be affected because, as noted above, for the first three months of 1986, 91 percent were paid within 30 days. For those few claims that are not paid within 30 days, we believe that program requirements concerning payment of interest on overpayments or underpayments in the cost report settlement process should not be expanded to the area of bill processing.

Comment: Many commenters believe that the negative impact on hospital cash flow will not be alleviated by the availability of accelerated payments as was stated in the proposed rule (51 FR 19989).

Response: We believe that with the other steps we are taking regarding improvement of intermediary bill processing time, the need for accelerated payments should be greatly reduced. We will continue to work with intermediaries that do not now process claims timely. However, for those providers that experience financial difficulties after July 1, 1987 due to a delay by an intermediary in making payment, accelerated payments will continue to be available in those situations in which they are warranted, as is currently provided in § 405.454(h).

Comment: One commenter noted that the elimination of PIP will not eliminate the need for periodic updating, monitoring, and year-end reconciliation that are required for interim payments because these activities will continue to be necessary for those services reimbursed on a reasonable cost basis (that is, for outpatient services, for services furnished by hospitals excluded from the prospective payment system, and for any payments made in addition to the prospective payment rate for hospitals subject to that system (capital-related costs and medical education costs)).

Response: Periodic reviews and a final year-end reconciliation required for interim payments will still be necessary for all costs paid on a reasonable cost basis. However, we do not believe that the continuation of these activities is inconsistent with elimination of PIP as a method of payment for services. We believe that PIP represents an unnecessary burden for intermediaries. While a year-end reconciliation is necessary for both PIP and non-PIP hospitals reimbursed on a reasonable cost basis, interim reimbursement on the basis of submitted bills is more accurate and, thus, requires less monitoring by intermediaries. With regard to prospective payment hospitals, interim payments and the corresponding review of these payments is unnecssary for services paid on a per discharge basis.

Furthermore, elimination of PIP supports what has always been the underlying principle governing interim payments, that is, that they approximate actual costs as nearly as possible so that the reconciliation at the end of the year based on actual costs will be as small as possible. See §405.454(b).

Comment: Two commenters believe that calculating and monitoring PIP amounts for prospective payment hospitals is easier than for excluded

hospitals and thus is less, rather than more, burdensome for intermediaries.

Response: We agree that it may be generally less burdensome to calculate and monitor PIP for prospective payment hospitals than for hospitals paid on a reasonable cost basis. However, we continue to believe that in either case, PIP is more burdensome for intermediaries than making payments based on submitted bills.

Comment: One commenter presumed that PIP was implemented in full recognition of the administrative costs involved and stated that HCFA has failed to give a rational basis for the elimination of PIP despite the costs associated with it. Another commenter believes that HFCA's lack of adequate factual evidence in support of the elimination of PIP renders the proposal invalid.

Response: The reason that the PIP method of payment was developed early in the Medicare program was to ensure a more even cash flow for hospitals. At that time, many hospitals had not developed adequate billing systems and PIP was necessary to ensure financial viability for hospitals as they gained experience in the Medicare program despite the additional intermediary costs associated with PIP. Hospitals have long since adapted their practices to meet the requirements of the Medicare program and, in addition, we believe that hospitals subject to the prospective payment system have also had adequate time to conform their operations to accommodate the requirements of that system. Therefore, any costs incurred by intermediaries in administering PIP are no longer necessary as they were when PIP was developed.

We believe that intermediary efforts can now be better directed toward other activities, including more timely processing and payment of claims based on submitted bills. The result of the elimination of PIP is simply that payment will be made on a bill basis rather than under a method that distributes an estimated annual amount in periodic payments that are generally made every two weeks. We believe that payment on the basis of a submitted bill is a reasonable way to make payment for services furnished to Medicare beneficiaries, particularly in light of the availability of EMC, as well as continued improvement in intermediary processing time to ensure more timely payment.

Comment: Some commenters believe that those hospitals currently receiving PIP that meet all the requirements for PIP including timeliness of billing are the most efficient hospitals and least deserve to be removed from PIP.

Response: We believe that those hospitals that are the most efficient in submitting bills timely will have the least difficulty in maintaining an even cash flow when required to receive payment on a bill-by-bill basis.

Comment: A number of commenters do not agree with our statement in the proposed rule that hospitals receiving PIP have less incentive to bill timely than hospitals not receiving PIP (51 FR 19989). They noted that current PIP criteria provide strong incentive to bill timely.

Response: We believe that timely bill submittal should not be driven by a Medicare requirement regarding PIP but rather by the incentive of receiving payment on a submitted bill. The elimination of PIP in conjunction with timely processing and payment by intermediaries will provide this incentive. This approach is more consistent with normal business practices.

Comment: Several commenters noted that although we stated in the proposed rule (51 FR 19989) that PIP was offered to prospective payment hospitals only as an interim measure to ensure a smooth transition for reimbursement on a reasonable cost basis to the prospective payment system, the September 1, 1983 interim final rule that implemented the prospective payment system did not indicate the interim nature of PIP.

Response: While neither the preamble of the September 1, 1983 interim final rule nor the regulations at § 405.454(m) specifically stated that PIP was an interim measure for prospective payment hospitals, it has been our belief since the implementation of the prospective payment system that PIP is inappropriate for payments made on a per discharge basis under a prospective payment system. Therefore, we intended that PIP would be available to hospitals paid under that system only for a limited period of time. In any event, we are giving hospitals almost a full year's notice to prepare for the elimination of PIP.

Comment: Commenters recommended that even if we eliminate PIP for prospective payment hospitals, it should continue to be an option for hospitals excluded from the prospective payment system since the reasons for eliminating PIP for prospective payment hospitals do not apply to excluded hospitals. Other commenters recommended that small rural hospitals be allowed to continue to receive PIP noting, among other things, their marked fluctuation in patient census from week to week, their higher Medicare utilization, and their inadequate administrative resources to incorporate changes in billing procedures and other changes required by HCFA. Two commenters believe that the elimination of PIP would be a hardship to hospitals that have a high Medicare utilization rate and recommended that PIP be continued for these hospitals.

Response: We continue to believe that PIP is not the most appropriate mechanism for making interim payments. As stated above, it is our opinion that all hospitals should now be capable of submitting timely and accurate claims, which should result in faster payments on the basis of submitted bills.

However, we are somewhat persuaded by several commenters' arguments. We believe that without PIP, small rural hospitals' cash flow could be noticeably affected as a result of a combination of factors inherent in the operations of these hospitals (that is, fluctuating patient census, high Medicare utilization rates, and limited administrative resources). Rural hospitals with fewer than 100 beds average over 50 percent Medicare utilization, which is higher than the Medicare utilization rate in larger rural hospitals and in all bed size category urban hospitals. Thus, a significant portion of a small rural hospital's operating revenues is attributable to the care of Medicare beneficiaries. At the same time, rural hospitals with fewer than 100 beds average less than 40 percent occupancy, which is lower than the occupancy rate in both larger rural hospitals and all bed size category urban hospitals.

This low occupancy rate, which magnifies cash flow problems caused by fluctuations in patient census, coupled with the fact that Medicare payments represent a significant portion of the revenues for these small rural hospitals could make these hospitals particularly vulnerable to cash flow disruption if PIP were eliminated for them. Therefore, for the time being, we believe that it is appropriate to allow rural hospitals with fewer than 100 beds to continue to use PIP. Accordingly, we are not eliminating the PIP option for these hospitals at this time.

We do not believe that it is appropriate to create an exception to the elimination of PIP solely on the basis of a high Medicare utilization rate. A high Medicare utilization rate may be a problem for small rural hospitals; however, as discussed above, we will not be eliminating PIP for these hospitals at this time.

Comment: A few commenters requested a clarification of our statement in the proposed rule (51 FR 19989) that ". . . we would make payments to hospitals, based on submitted bills for payment not less often than monthly." Some commenters were concerned that this statement means that HCFA is planning to pay only monthly for regular claims processing and they recommended that if PIP is eliminated, payment should be made no less often than weekly.

Response: By our statement in the proposed rule that we would make payment not less often than monthly, we did not mean that payments would be received on a monthly basis. Rather, it was meant to clarify that, in accordance with the requirements of section 1815(a) of the Act, payment to hospitals must be made *at least* monthly. While there is no statutory requirement that payment be made weekly, many intermediaries make payment to their non-PIP hospitals on a weekly basis.

Comment: A few commenters suggested that PIP not be eliminated until we have evaluated the effect of the elimination of PIP on hospital cash flow and have considered factors such as the time for processing and payment of claims by intermediaries and the incorporation of capital-related payments and direct medical education costs into the prospective payment rates. One commenter specifically requested that we evaluate the effect of the unavailability of PIP on small rural hospitals. Another commenter recommended that we not eliminate PIP until we have considered other options.

Response: As discussed above, we agree that some intermediaries' payment cycles have lengthened because of unanticipated increased claims volume and tight budgets. As we noted above, we have released funds to the intermediaries to expedite the processing of backlogs and to assist intermediaries in processing bills timely.

Concerning the incorporation of direct medical education costs and capital-related costs into the prospective payment rates, interim payments will continue to be made on a biweekly basis for these costs pending any such incorporation. However, we do not agree that the elimination of PIP should be contingent upon inclusion of these costs into the prospective payment rates since hospitals are currently receiving interim payment for these costs. At such time as these costs may be incorporated into the prospective payment system, they would become part of the prospective payment rates and, thus would warrant payment on a per discharge basis as the costs already incorporated into those rates do now.

With respect to small rural hospitals, as discussed above, we believe that rural hospitals with fewer than 100 beds, at least for the present, should be permitted to receive PIP if they qualify.

With regard to consideration of other options, we have considered a number of the commenters' recommendations concerning the proposed elimination of PIP, and we have made two changes to our original proposal. As mentioned above, PIP will continue to be available to rural hospitals with fewer than 100 beds. As discussed below, we have also reduced the time necessary for prospective payment hospitals to qualify for an interim payment for long-stay patients.

Comment: Several commenters suggested that hospitals that have recently become subject to the prospective payment system, or that become subject to that system in the future, be allowed to receive PIP for a comparable three-year transition period, so that they will receive the same advantage of an even cash flow as other hospitals received when they were first subject to the prospective payment system.

Response: We believe that a prospective implementation date of July 1, 1987 provides an adequate amount of notice for all hospitals to prepare for the elimination of PIP. While some hospitals currently have not been subject to the prospective payment system for three full years, by July 1, 1987, essentially all hospitals will be in at least their second year of prospective payment. For hospitals that become subject to the prospective payment system in the future, we do not believe a transition period will be necessary since these hospitals will have adequate time to adjust to the new system.

Comment: Several commenters recommended that recognition of working capital needs be built into the prospective payment system if PIP is eliminated.

Response: Payments made under the prospective payment system, by paying for services furnished to a Medicare beneficiary, already recognize a hospital's working capital needs. We expect that the actions we have discussed above to ensure timely intermediary claims processing and payment will properly provide for the working capital needs of hospitals without the need for PIP.

Comment: One commenter suggested that not only should PIP be retained for Part A provider services, it should be expanded to include payment for part B provider services.

Response: PIP has never been permitted for any services other than Part A services except for Part B home health services, which are indistinguishable from Part A home health services. We do not believe PIP is appropriate because it is burdensome to intermediaries, results in less accurate payments, and is not consistent with general business practices. Therefore, we find no basis for expanding PIP, and we continue to believe PIP should be eliminated for hospitals.

Comment: One commenter requested an explanation of how we will handle the transition from payment on a PIP basis to payment on a bill basis in those cases in which a hospital had been paid too little or too much under PIP compared to payment based on submitted bills.

Response: If the intermediary determines that a hospital was paid too little while under PIP, it will make a lump-sum payment to the hospital based on its determination. If it is determined that a hospital was paid too much, the intermediary's first course of action is to recoup the excess payment in a lump sum. However, if the amount is substantial and immediate recovery may cause a cash-flow problem, and the hospital requests additional time to make the repayment, the intermediary can recoup the excess through a limited number of interim payments.

Comment: Several commenters requested that we expand our proposed exception that would provide prospective payment hospitals with an interim payment once a beneficiary's length of stay exceeds 45 days to also cover hospitals excluded from the prospective payment system. However, they recommended that excluded hospitals should be permitted to receive an interim payment once a length of stay exceeds 30 days.

Response: Because payment to prospective payment hospitals is made on a per discharge basis, an interim payment is necessary to accommodate cash flow problems that may result from unusually long stays. However, payment to hospitals excluded from that system (that is, those hospitals paid under reasonable cost principles) is not made on a per discharge basis. In cases of long stays in excluded hospitals, interim billing before discharge has always been an option. Although it has not been a specific requirement that intermediaries permit billing every 30 days, we are now clarifying our policy to the effect that excluded hospitals may submit a bill for any stay that exceeds 30 days, and that

the intermediaries will process those bills as submitted.

Comment: Some commenters suggested variations to the proposed 45-day length of stay necessary for receipt of an interim payment by prospective payment hospitals for long stay patients. The suggestions included a time frame of 30 days, the criteria for day or cost outliers, or twice the national average Medicare patient length of stay.

Response: We have reconsidered the proposed 45-day length of stay necessary to qualify for an interim payment. We now believe that 30 days is more appropriate. A specific period of time such as 30 days will avoid any administrative problems that may be associated with a criterion that varies from patient to patient, such as one based on outlier status.

Comment: Regarding our statement in the proposed rule that PIP represents a general departure from customary business practice (51 FR 19989), several commenters noted that PIP is not unlike business practices in other industries that provide for progress payments.

Response: While some businesses may make progress payments, we believe that it is generally more customary to pay for services as rendered. We believe that payment for services as rendered is equally appropriate with respect to services furnished to Medicare patients, particularly since stays are generally relatively short in duration. Prospective payment hospitals receive a final payment based on a discharge bill; for an unusually long stay by a Medicare patient, an interim payment is available after 30 days (see discussion above). Hospitals paid on a reasonable cost basis receive an estimated interim payment based on a discharge bill; for unusually long stays, as discussed above, the hospital may submit a bill after 30 days and the intermediary will process that bill for payment. Therefore, for the average case (the average length of stay for Medicare patients is 8.5 days), we believe that payment after discharge is both adequate and proper. For long-stay cases, the interim payment available to prospective payment hospitals and excluded hospitals for a portion of the long stay provide timely payment to hospitals and represent, in effect, progress payments.

Comment: One commenter, in recommending that PIP be retained, suggested that outdated PIP criteria be eliminated, that other criteria, including recently proposed changes applicable to providers that will retain PIP as an option, be revised, and that HCFA take other actions with regard to PIP, including consistent application of PIP criteria by the regional offices and the intermediaries.

Response: As discussed above, we plan to eliminate PIP for all hospitals effective July 1, 1987 except for rural hospitals with fewer than 100 beds. To the extent that PIP may still be used, we agree that some PIP criteria need to be revised and, if appropriate, eliminated. We also agree that the PIP criteria should be consistently applied on a national basis. To that end, in August 1985, we issued proposed manual changes to both the PIP criteria and the application of PIP. We have received comments on that proposal from the public and we are considering those comments, as well as comments received in response to the June 3, 1986 proposed rule, in development of the final manual changes.

Comment: One commenter suggested that all claims be paid "as billed" unless an intermediary's aggregate total of days work-on-hand goes above the performance standard at the end of any month or unless HCFA or Congress imposes significant modifications on hospitals or intermediaries. In these cases, HCFA would immediately provide each hospital with an interest-free PIP working capital advance equal to the hospital's daily average working capital needs in excess of the intermediary's performance threshold. The advance would be retained until the intermediary's performance is evaluated at the end of the next month. The commenter also suggested that rural hospitals with fewer than 50 beds be permitted to maintain PIP under the current procedures, with the amount of PIP based on those hospitals' prior year's payments under the prospective payment system.

Response: We have reviewed this suggested alternative and believe that it would create a greater burden on intermediaries than even the current PIP system does. Apparently, this proposal could result in hospitals moving on and off PIP. We believe that this would be disruptive and would create additional problems in making accurate interim payments. Therefore, we have not adopted ths suggestion; however as discussed above, we will be permitting rural hospitals with fewer than 100 beds to remain on PIP.

IV. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for regulations that meet the criteria of a "major rule". A major rule is a regulation that would be likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we prepare and publish an initial regulatory flexibility analysis, consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 through 612), for regulations unless the Secretary certifies that their implementation would not have a significant economic impact on a substantial number of small entities.

Our initial proposal to eliminate PIP was included in a major rule (that is, the proposed rule concerning FY 1987 changes to the prospective payment system published on June 3, 1986) and was discussed in the impact analysis of that rule (51 FR 20105. We believe that it is arguable whether this rule, by itself, would be a major rule. Nonetheless, it clearly would have a significant economic impact on a substantial number of small entities, and comments on the proposal show that many affected hospitals view the elimination of PIP as having great financial impact on them. Therefore, we have prepared the following analysis, which serves as an analysis consistent with the RFA and a voluntary economic analysis under E.O. 12291.

B. Affected Entities

Nearly 3400 hospitals currently receive payments under the PIP method. Of these, about 250 are hospitals excluded from the prospective payment system, such as rehabilitation, psychiatric and long-term care hospitals. (About 750 excluded hospitals continue to be paid on the basis of reasonable cost reimbursement, subject to hospital-specific limits in the rate of their cost increases.) Nearly three-fourths of the excluded hospitals receiving PIP payments are psychiatric hospitals. PIP payments for excluded hospitals cover all their costs, including inpatient operating costs, capital costs, and outpatient costs.

Most of the hospitals (more than 54 percent) included in the prospective payment system receive PIP payments. There are now about 5800 hospitals under the prospective payment system, and about 3150 receive PIP payments for their inpatient operating costs. All

hospitals under the prospective payment system also receive regular biweekly payments for their capital-related costs and other costs paid in addition to the prospective payment rates.

Almost 48 percent of prospective payment hospitals are rural and almost 40 percent of rural prospective payment hospitals are on PIP. By comparison, more than 67 percent of the urban prospective payment hospitals are on PIP.

Many rural hospitals are quite small. Relative to their number, they account for a small portion of Medicare expenditures under the prospective payment system. Roughly, it may be said that rural hospitals are about 50 percent of all the prospective payment hospitals, yet they account for only about 25 percent of the discharges and 17 percent of the Medicare expenditures. This is even more strongly the case with the smaller rural hospitals, of which less than a third are on PIP. The more than 2125 rural hospitals with fewer than 100 beds account for only about seven percent of propsective payments, and 1070 rural hospitals with fewer than 50 beds (more than 18 percent of all prospective payment hospitals) account for less than three percent of total prospective payment expenditures. The converse is, of course, true of large and urban hospitals. For example, about 120 large urban hospitals with more than 685 beds (only two percent of all prospective payment hospitals) account for more than 10 percent of all payments under the prospective payment system.

C. Expected Financial Impact

As we explained in the June 3, 1986 proposed rule, as a result of PIP, payments to PIP hospitals have been delayed less than reimbursement for non-PIP hospitals. Therefore, PIP hospitals have had a cash flow advantage over non-PIP hospitals. As a result of the elimination of PIP, the payment processing time for hospitals presently under PIP could come to equal the current processing time for current non-PIP hospitals. If this were to occur, our Medicare program outlays (as distinct from incurred expenditures) would be temporarily reduced. Thus, the direct financial impact of the elimination of PIP will be on the cash flow both of affected hospitals and the Medicare program.

These cash flow effects will not represent any actual reduction of Medicare expenditures or provider revenues. The inpatient services furnished by affected providers will still be paid for on the same basis and at the same level as under PIP. Thus, we do not expect this change to affect incurred Medicare expenditures. However, payment would not necessarily be paid in the same fiscal periods.

We anticipate that without PIP, payments to hospitals generally will be made somewhat more slowly than under PIP. As a result, some payments that would otherwise have been made (or, for the hospital, received) at the end of one fiscal period will be made, instead, at the beginning of the next fiscal period. We estimate that the first-year effect of these delays, if applicable for all hospitals currently receiving PIP, would reduce FY 1987 Medicare expenditures, on a cash basis, by $3.66 billion. For later years, the payments carried over from the preceding fiscal period would, for the most part, offset payments delayed to the subsequent fiscal period. As a result, the effect of this change on projected cash outlays for fiscal years 1988 and following would be much smaller than the one-time cash outlay reduction for FY 1987 (1988—$340 million; FY 1989—$410 million; FY 1990—$430 million; FY 1991—$440 million).

The expected showing of cash flow from the Part A trust fund will also result in increased interest revenue to the trust fund. This is limited, however, by requirements for timely intermediary processing of clean claims.

D. Impact on Hospitals

The elimination of PIP will make hospital revenue much more dependent on two factors: timely and accurate hospital billing, and intermediary performance.

As noted in the June 3, 1986 proposed rule, we anticipate that elimination of PIP will give current PIP hospitals incentives to speed up their billing process. We expect affected hospitals to review their billing procedures and seek means to speed up and improve the accuracy of billing. Thus, it would be likely that a hospital that does not currently file EMCs would look at its own billing cycles and decide whether or nor to bill through EMC. Nearly all hospitals, including even small rural hospitals, now have computer systems with the capability to submit claims electronically to the intermediary. However, at the present time our data show that only 50 percent of hospitals submit EMCs. We believe that the elimination of PIP would provide an incentive for more hospitals to convert to electronic claims.

For a hospital paid on a bill basis, billing errors may mean significant delay of payment. EMCs are prepared more easily by the hospital, with fewer errors than hardcopy claims. Additionally, EMCs are automatically entered into the intermediary's system, while hard copy bills must be individually typed. We believe that, in the absence of PIP, EMCs could result in more accurate payment than under individual hardcopy billing for some hospitals.

Just as the Part A trust fund will benefit from the one-time delay of end-of-year payment from the first affected fiscal period to the subsequent period, hospitals will experience, on the whole, a one-time decline in total receipts for their first affected fiscal periods. Of course, affected hospitals will notice this effect early after the elimination of PIP, not just at the end of the cost reporting period.

The degree to which payments are delayed, and the magnitude of the effect of these delays, will vary from hospital to hospital, depending on Medicare utilization and revenues, management, and resources. Those hospitals that have effective billing systems in place generally would tend to be in better financial condition than less well managed hospitals. Much of the impact of the elimination of PIP will depend on the financial planning and cash flow management, as well as the available operating reserves, of individual hospitals. Any hospital would have strong incentives to make whatever improvements and arrangements are necessary to ensure adequate future cash flow. The ample future notice we have afforded (that is, the July 1, 1987 implementation date) should enable many hospitals to minimize the effect of the elimination of PIP.

Nonetheless, it is clear that many hospitals currently have cash flow difficulties which, if exacerbated, may threaten their continuing operation. We have identified one category of hospitals that would be placed most at risk by the elimination of PIP, and provided that hospitals in this category may continue to receive PIP payments. Thus, we will continue to allow PIP for rural hospitals with fewer than 100 beds, about 700 of which currently are under PIP. Elimination of PIP for these hospitals could have delayed $70 million of Medicare outlays from FY 1987 to FY 1988. This would not substantially increase benefits to the Medicare program and could risk impairing access to care in some rural areas. By allowing these hospitals to continue on PIP, we believe potential adverse effect on Medicare beneficiaries will be avoided.

E. Alternatives Considered

We considered not eliminating PIP at all. However, the expected financial and administrative benefits to the Medicare

program are substantial, and we rejected this alternative. We also considered allowing other groups of hospitals, in addition to rural hospitals with fewer than 100 beds, to continue to receive PIP payments. For example, we reviewed the arguments advanced by some excluded hospitals that the elimination of PIP would affect them adversely. We did not find that potential adverse consequences alleged by the commenters were of sufficient magnitude and likelihood of occurrence to justify continuation of those payments, in view of the benefits to be realized from their discontinuance.

F. Conclusion

Taking into consideration the continuation of PIP for more than 700 small rural hospitals, we project a reduction of FY 1987 Medicare cash outlays of more than $3.59 billion. We further expect elimination of PIP for most hospitals to allow simplification of contractor operation and to encourage more accurate and timely hospital billing. We believe these benefits outweigh the problems that the elimination of PIP may cause by delaying payments to some hospitals.

V. Other Required Information

A. Paperwork Reduction Act

This final rule does not impose any information collection requirements; consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 405, Subpart D is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians

1. The authority citation for Subpart D continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a) 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

2. In § 405.454, the introductory text of paragraph (j) is redesignated as paragraph (j)(1) and revised; current paragraphs (j)(1) through (j)(5) are redesignated as paragraphs (j)(2) through (j)(6) respectively; in newly redesignated paragraph (j)(2), the introductory text and paragraphs (j)(2)(i) through (j)(2)(iii) are revised; and paragraph (m) is revised to read as follows:

§ 405.454 Payments to providers.

* * * * *

(j) *Periodic interim payment method of reimbursement.*—(1)(i) *Covered services furnished before July 1, 1987.* In addition to the regular methods of interim payment on individual provider billings for covered services, the periodic interim payment (PIP) method is available for Part A hospital and SNF inpatient services and for both Part A and Part B HHA services.

(ii) *Covered services furnished on or after July 1, 1987.* Effective with covered services furnished to beneficiaries on or after July 1, 1987, the PIP method, in addition to the other methods of interim payment on individual provider billings for covered services, is available only for the following:

(A) Part A SNF services.

(B) Part A and Part B HHA services.

(C) Part A services furnished in hospitals receiving payment in accordance with a demonstration project authorized under section 402(a) of Pub. L. 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Pub. L. 92–603 (42 U.S.C. 1395b–1 (note)), or a State reimbursement control system approved under section 1886(c) of the Act and Subpart C of Part 403 of this chapter, if that type of payment is specifically approved by HCFA as a part of the demonstration or control system.

(D) Part A services furnished in hospitals located in a rural area as defined in §412.62(f) of this chapter that have fewer than 100 beds available for use excluding beds assigned to newborns.

(2) Any participating provider furnishing the services described in paragraph (j)(1) of this section that establishes to the satisfaction of the intermediary that it meets the following requirements may elect to be reimbursed under the PIP method, beginning with the first month after its request that the intermediary finds administratively feasible:

(i) The provider's estimated total Medicare reimbursement for inpatient services is at least $25,000 a year computed under the PIP formula or, in the case of an HHA, either its estimated—

(A) *Total Medicare reimbursement* for Part A and Part B services is at least $25,000 a year computed under the PIP formula; or

(B) Medicare reimbursement computed under the PIP formula is at least 50 percent of estimated total allowable cost.

(ii) The provider has filed at least one completed Medicare cost report accepted by the intermediary as providing an accurate basis for computation of program payment (except in the case of a provider requesting reimbursement under the PIP method upon first entering the Medicare program).

(iii) The provider has the continuing capability of maintaining in its records the cost, charge, and statistical data needed to accurately complete a Medicare cost report on a timely basis.

* * * * *

(m) *Prospective payments.*—(1) *General rule.*—(i) *Final payment.* For cost reporting periods beginning on or after October 1, 1983, hospitals subject to the prospective payment system are paid for Part A inpatient operating costs on a per discharge basis using prospectively determined rates. The amounts represent final payment based on the submission of a discharge bill. Unless the provisions of paragraphs (m)(2) through (m)(5) of this section apply, year-end retroactive adjustments are not made for prospective payment hospitals.

(ii) *Outlier payments.* Payments for outlier cases (described in Subpart F of Part 412 of this chapter) are not made on an interim basis. The outlier payments are made based on submitted bills and represent final payment.

(iii) *Other payments.* Medical education costs are reimbursed as described in § 405.421, and capital-related costs are reimbursed as described in § 405.414.

(2) Interim prospective payments per discharge. (i) Except as provided in paragraph (m)(2)(ii) of this section, prospective payment hospitals meeting the criteria in paragraph (j) of this section may elect to receive periodic interim payments for discharges occurring before July 1, 1987. Therefore, at the discretion of the intermediary, the hospital's prospective payments are estimated and made on a periodic interim basis (26 biweekly payments). These payments are subject to final settlement. Each payment is made two weeks after the end of a biweekly period of services, as described in paragraph (j)(5) of this section. Hospitals electing periodic interim payments may

convert to payments on a per discharge basis at any time.

(ii) Prospective payment hospitals located in a rural area as defined in § 412.62(f) of this chapter that have fewer than 100 beds available for use excluding beds assigned to newborns and meet the criteria in paragraph (j) of this section may elect to receive periodic interim payments for discharge occurring on or after July 1, 1987.

(iii) For the hospitals receivings periodic interim payments for inpatient operating costs, the biweekly interim payment amount is based on the total estimated Medicare discharges for the reporting period multiplied by the hospital's estimated average prospective payment amount. These interim payments are reviewed at least twice during the reporting period and adjusted if necessary.

(iv) For purposes of determining periodic interim payments under this paragraph, the intermediary computes a hospital's estimated average propsective payment amount by multiplying its transition payment rates as determined under § 412.70(c) of this chapter, but without adjustment by a DRG weighting factor, by the hospital's case-mix index, and subtracting from this amount estimated deductibles and coinsurance.

(3) Special interim payments for certain costs. For capital-related costs and the direct costs of medical education, which are not included in prospective payments but are reimbursed as specified in §§ 405.414 and 405.421, respectively, interim payments are made subject to final cost settlement. Interim payments for capital-related items and the estimated cost of approved medical education programs (applicable to inpatient costs payable under Part A and for kidney acquisition costs in hospitals approved as rental transplantation centers) are determined by estimating the reimbursable amount for the year based on the previous years experience and on substantiated information for the current year and divided into 26 equal biweekly payments. Each payment is made two weeks after the end of a biweekly period of services, as described in paragraph (j)(5) of this section. The interim payments are reviewed by the intermediary at least twice during the reporting period and adjusted if necessary.

(4) Special interim payments for the indirect costs of medical education. Payments for the indirect costs of medical education (described in § 412.118 of this chapter) are paid based on an estimate of the total for the Federal portion of the diagnosis-related group revenue to be received in the current period. The total estimated annual amount of the adjustment is divided into 26 equal biweekly payments and included with other inpatient costs reimbursed on a reasonable cost basis. This estimate is subject to year-end adjustment. Each payment is made two weeks after the end of a biweekly period of services. The interim payments are reviewed by the intermediary at least twice during ther reporting period and adjusted if necessary.

(5) Special interim payments for unusually long lengths of stay. For discharges occurring on or after July 1, 1987, a hospital may request an interim payment if a Medicare beneficiary's length of stay exceeds 30 days. The amount of the interim payment is equal to the hospital's Federal rate multiplied by the appropriate diagnosis-related group weighting factor. Only one interim payment per discharge is permitted.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program)

Dated: July 31, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved August 11, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-18407 Filed 8-12-86; 11:01 am]

BILLING CODE 4120-01-M

Federal Register

Friday
August 15, 1986

Part IV

Department of Education

34 CFR Part 668

Postsecondary Education; Student Assistance General Provisions; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 668

Postsecondary Education; Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education amends Subpart E of the Student Assistance General Provisions regulations, 34 CFR Part 668, to reduce administrative burden and to provide institutions with greater flexibility in verifying student aid application information.

EFFECTIVE DATE: These regulations become effective either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. However, when the regulations become effective, they will govern the procedures that institutions must use to verify information included on an application to have an expected family contribution calculated for the purpose of receiving financial assistance under the Title IV, HEA Programs for the 1986–87 and subsequent award years. The Title IV, HEA Programs include the Pell Grant, Guaranteed Student Loan (GSL), National Direct Student Loan (NDSL), College Work-Study (CWS), and Supplemental Education Opportunity Grant (SEOG) Programs. (The latter three programs are also known as the campus-based programs.)

FOR FURTHER INFORMATION CONTACT: Mr. Fred Sellers or Ms. Carney McCullough, U.S. Department of Education, Office of Student Financial Assistance, Regional Office Building 3, Room 4318, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone number (202) 472–4300.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking (NPRM) to implement an integrated system of verifying student aid application information under the Title IV, HEA programs was published in the **Federal Register** of July 26, 1985, 50 FR 30674–30685. The proposed integrated system, set forth as Subpart E of the Student Assistance General Provisions regulations, was developed to reduce high error rates in information reported by students applying to have their expected family contributions calculated under the Title IV, HEA programs. Many of the commenters who responded expressed concern over the administrative burden associated with the proposed verification system.

The final verification regulations published in the **Federal Register** of March 14, 1986, 50 FR 8946–8974, contained several changes from the NPRM to relieve the burden placed on institutions. When the final regulations were published, the Assistant Secretary for Postsecondary Education independently requested financial aid administrators to inform the Department of Education (ED) of any undue administrative difficulties institutions encountered in administering the verification process. Additionally, at various conferences of financial aid administrators, ED personnel have solicited comments on the functioning of the verification process under the new regulations.

As a result of these solicitations, ED has received a considerable number of comments. These final regulations incorporate a number of suggestions that are intended to reduce administrative burden and improve the timeliness of financial aid delivery without diminishing the effort to reduce applicant reporting error. Although the Secretary is revising the regulations to provide that an institution need not require an applicant to verify information under certain circumstances, the institution continues to be responsible for resolving any circumstance for which it has conflicting documentation in accordance with § 668.16(f) or if it has reason to believe that the information is inaccurate in accordance with § 668.54(a)(3). The following is a listing of the changes to the final regulations.

Section 668.56 Items To Be Verified

Under the existing regulations, an applicant must verify the number of family members in his or her household if the household size is greater than two in the case of a dependent student, or greater than one in the case of an independent student. Several commenters noted that if a dependent student's parents are married, the household size would be at least three, and if an independent student is married, the household size would be at least two. Therefore, the verification requirement is too restrictive. The Secretary agrees and has revised the regulations to add that an applicant must verify the number of family members in his or her household only if the household size is greater than three in the case of a dependent student whose parents are married and if the household size is greater than two in the case of a married independent student.

Other commenters indicated that it is burdensome to require an applicant to verify household size or the number of family members attending post-secondary educational institutions if the applicant submits a Student Aid Report (SAR) or other output document to the institution within 90 days of filing the financial aid application that produced the SAR or output document since the applicant certified that this information was correct on the application and the documentation obtained from the applicant would not be likely to show a difference. For similar reasons, it is needlessly burdensome to verify these items if the applicant is selected for verification but does not submit an SAR or the institution does not receive an output document from an approved need analysis system. The Secretary agrees and has revised the regulations to provide in § 668.56(d) that an applicant must verify the number of family members in the household and the number of family members attending postsecondary educational institutions only if more than 90 days have elapsed between the date the applicant signs his or her application and the date the applicant submits an SAR or the date the institution receives an output document.

A number of commenters noted that several items reported by an applicant tend to remain constant each award year, and that it is needlessly burdensome to require applicants to verify this information if it has been verified in the previous award year. The Secretary agrees and has provided in § 668.56(e) that an institution need not require an applicant to verify the number of family members in the household, the number of family members attending postsecondary educational institutions, independent student status, or the amount of child support received if the applicant's reported data are the same as that verified by the institution in the previous award year.

Several commenters suggested that an applicant not be required to provide a statement to verify the number of family members attending postsecondary educational institutions if the other family members are enrolled at the same institution as the applicant and the institution can verify their enrollment from its own records. The Secretary agrees and has amended § 668.56(f) accordingly.

Many commenters believed that it is not useful to verify a family's untaxed income if the untaxed income or benefits were received from a Federal, State, or local government agency and were based on the family's need for financial assistance. Families that are eligible for "need-based" public assistance are

generally low income families for whom Title IV, HEA-program assistance is intended. As a result, any error made by the applicant in reporting untaxed income and benefits would not result in a significant change, if any, in the applicant's calculated EFC. Applicants from families on public assistance are also the most likely to be discouraged by the verification process, and in particular by the requirement to verify income or benefits received from government agencies. The Secretary agrees with these commenters that verification of untaxed income should not be required for these applicants when the institution has knowledge that this assistance is received from government agencies and has provided in § 668.56(g) that an institution need not require an applicant to verify untaxed income and benefits when the applicants, the applicant's spouse, or the applicant's parents receive income or benefits from a Federal, State or local government agency which uses a needs test to determine eligibility for this assistance.

Section 668.57 Acceptable Documentation

Several commenters noted that IRS Schedule W provides the same information necessary to verify adjusted gross income as IRS Form W–2 if a dependent student applicant's parents or an independent student applicant filed a joint return and now is a widow or widower or is divorced or separated. Morever, these commenters noted that in some cases, it may be easier for the applicant to provide the IRS Schedule W rather than the IRS Form W–2 to the institution. The Secretary agrees and has revised § 668.57 to allow an applicant to provide IRS Schedule W as an alternative to IRS Form W–2 when verifying adjusted gross income under certain circumstances.

Under the existing regulations, the Secretary lists three items as acceptable documentation for verifying the amount of child support received by the applicant, or the applicant's spouse or parents. The Secretary wishes to clarify that these items are examples of acceptable documentation, and has revised § 668.57(e)(3)(ii) to allow other types of source documentation in instances where the institution believes the information provided by the applicants is inaccurate.

Section 668.58 Interim Disbursements

Under existing regulations, an institution shall not certify an applicant's GSL loan application or process a GSL loan check for any previously certified GSL loan application until the applicant completes verification. Many commenters objected to the excessive delays in the delivery of GSL loan proceeds to students because of the time required for verification prior to certification and processing of GSL loan applications. They pointed out that GSL loan proceeds could not be disbursed to students until verification was completed and that the prohibition against certifying a GSL loan application until verification is completed is therefore unnecessary. The Secretary agrees with the commenters and has revised § 668.58(a)(2)(iii) to allow an institution the option of certifying a GSL loan application before the applicant completes verification if the institution does not have information that conflicts with the information reported by the applicant.

In addition, the Secretary revised § 668.58 by adding § 668.58(d) which sets forth a procedure for institutions to follow when the amount of a previously certified GSL loan check exceeds the student's need for the loan based on the verified information. If any excess funds can be eliminated in subsequent disbursements, the institution may disburse the check and notify the lender to adjust the subsequent disbursements. If the excess funds cannot be eliminated in subsequent disbursements, the institution must return the check to the lender.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232 (b)(2)(A)), and the Administrative Producedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. The Secretary has received a substantial number of comments during the past month concerning the implementation of the verification regulations. As a result, he has determined that the verification regulations published in March contain some requirements that are not needed for adequate verification of student aid information, impose substantial burdens on postsecondary educational institutions, and are likely to lead to serious delays in the delivery of student aid. The changes in this document eliminate those unnecessary and burdensome requirements. It is essential that these amendments take effect immediately so as not to seriously affect the delivery of student aid for the award year that began on July 1, 1986. Under section 431(d) of the General Education Provision Act, these regulations do not become effective until at least 45 days after their publication. Therefore, the Secretary has determined that publication of a proposed rule is impracticable and contrary to the public interest under 5 U.S.C 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. These regulations contain technical amendments designed to reduce institutional burden. However, they will not have a significant economic impact on the institutions affected.

Assessment of Education Impact

The Secretary has determined that regulations in this document would not require transmissions of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education loan programs—education, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance: No. 84.007, Supplemental Educational Opportunity Grants; No. 84.032, Higher Education Act Insured Loans (Guaranteed Student Loans); No. 84.003, College Work-Study Pogram; No. 84–038, National Direct Student Loans; and No. 84.063, Pell Grant Program)

Dated: August 8, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 668 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1094, and 1141, unless otherwise noted.

2. Section 668.56 is amended by revising paragraphs (a) introductory text, (a)(3)(i) and (ii), and (b)(2)(ii) (A) and (B), and adding paragraphs (d), (e), (f), and (g) to read as follows:

§ 668.56 Items to be verified.

(a) Except as provided in paragraphs (b), (c), (d), (e), (f), and (g) of this section, an institution shall require an applicant selected for verification under § 668.54(a) (1) or (2) to submit acceptable documentation described in § 668.57 that will verify or update the following information used to determine the applicant's EFC:

* * * * *

(3)(i) For an applicant who is a dependent student, the aggregate number of family members in the household of the applicant's parents if—

(A) The applicant's parents are single, divorced, separated or widowed and the aggregate number of family members is greater than two; or

(B) The applicant's parents are married and the aggregate number of family members is greater than three.

(ii) for an applicant who is an independent student, the number of family members in the household of the applicant if—

(A) The applicant is single, divorced, separated, or widowed and the number of family members is greater than one; or

(B) The applicant is married and the number of family members is greater than two.

* * * * *

(b) * * *

(2) * * *

(ii)(A) For an applicant who is a dependent student, the aggregate number of family members in the household of the applicant's parents if—

(*1*) The applicant's parents are single, divorced, separated or widowed and the aggregate number of family members is greater than two; or

(*2*) The applicant's parents are married and the aggregate number of family members is greater than three; or

(*B*) For an applicant who is an independent student, the number of family members in the household of the applicant if—

(*1*) The applicant is single, divorced, separated or widowed and the number of family members is greater than one; or

(*2*) The applicant is married and the number of family members is greater than two;

* * * * *

(d) If an applicant selected for verification submits an SAR to the institution or the institution receives an output document as decribed in § 668.54(a)(2)(ii)(B) within 90 days of the date the applicant signed his or her application, or if an applicant is selected for verification under § 668.54(a)(2), the institution need not require the applicant to verify—

(1) The number of family members in the household; or

(2) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions.

(e) If the number of family members in the household, the number of family members in the household who are enrolled as at least half-time students in postseconday educational institutions, independent student status, or the amount of child support reported by an applicant selected for verification is the same as that verified by the institution in the previous award year, the institution need not require the applicant to verify that information.

(f) If the family members who are enrolled as at least half-time students in postsecondary educational institutions are enrolled at the same institution as the applicant, and the institution verifies their enrollment from its own records, the institution need not require the applicant to verify this information.

(g) If the applicant, and the applicant's spouse, or the applicant's parents receive untaxed income or benefits from a Federal, State, or local government agency which determines their eligibility for that income or benefits by means of a "financial needs test," the institution need not require the applicant to verify untaxed income and benefits.

(Authority: 20 U.S.C. 1095)

3. Section 668.57 is amended by revising paragraphs (a)(1)(ii) introductory text, (a)(1)(iii) introductory text and (a)(6), and paragraph (e)(3)(ii) introductory text to read as follows:

§ 668.57 Acceptable documentation.

(a) * * *

(1) * * *

(ii) For a dependent student, a copy of each Internal Revenue Service (IRS) Form W–2 received by the parent whose income is being taken into account or a copy of the parent's IRS Schedule W filed with the parents' tax return if—

* * * * *

(iii) For an independent student, a copy of each IRS Form W–2 he or she received or a copy of the student's IRS Schedule W filed with the student's tax return if the independent student—

* * * * *

(6) If an individual who is required to submit an IRS Form W–2 or a copy of IRS Schedule W under this paragraph is unable to obtain one in a timely manner, the institution may permit that individual to set forth, in a statement signed by the individual, the amount of income earned from work as stated on the application, the source of that income, and the reason that the IRS Form W–2 or Schedule W is not available in a timely manner.

* * * * *

(e) * * *

(3) * * *

(ii) If the institution believes that the information provided is inaccurate, a document such as—

* * * * *

4. Section 668.58 is amended by revising paragraph (a)(2)(iii) and adding paragraph (a)(2)(iv), and adding paragraph (d) to read as follows:

§ 668.58 Interim Disbursements.

(a) * * *

(2) * * *

(iii)(A) May withhold certification of the applicant's GSL loan application; or

(B) May certify the GSL loan application; and

(iv) Shall not disburse a GSL loan check.

* * * * *

(d)(1) If the institution receives a GSL loan check in an amount which exceeds the student's need for the loan based upon the verified information and the excess funds can be eliminated in subsequent disbursements for that period of instruction, the institution shall process the check and notify the lender to reduce the subsequent disbursements.

(2) If the institution receives a GSL loan check in an amount which exceeds the student's need for the loan based upon the verified information and the excess funds can be eliminated in subsequent disbursements for that period of instruction, the institution shall return the check to the lender.

(Authority: 20 U.S.C. 1094)

[FR Doc. 86–18319 Filed 8–4–86; 8:45 am]
BILLING CODE 4000–01–M

Federal Register

Friday
August 15, 1986

Part V

Office of Science and Technology Policy

Coordinated Framework for Regulation of Biotechnology; Extension of Time for Comments

Department of Agriculture

Plant Pests; Introduction of Organisms and Products Altered or Produced Through Genetic Engineering; Extension of Comment Period

Advanced Notice of Proposed USDA Guidelines for Biotechnology Research; Extension of Comment Period

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Coordinated Framework for Regulation of Biotechnology; Extension of Time for Comments

AGENCY: Executive Office of the President, Office of Science and Technology Policy.

ACTION: Notice of extension of public comment period.

SUMMARY: This Federal Register Notice extends the public comment period to September 26, 1986 for the coordinated framework for biotechnology published in the June 26, 1986 Federal Register (51 FR 23302).

DATE: Comments must be received on or before September 26, 1986.

ADDRESSES: Comments for particular aspects of the policy should be addressed to:

Biotechnology Science Coordinating Committee (BSCC) definitions or overall comments: Docket #BSCC 0001, Office of Science and Technology Policy, Executive office of the President, NEOB–Room 5005, Washington, DC 20506.

Food and Drug Administration (FDA) policy statement: Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Environmental Protection Agency (EPA) policy statement: Docket Number OPTS–00049A, Docket Control Officer (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M St. SW., Washington, DC 20460.

Department of Agriculture (USDA) policy statement for regulatory activities: Dr. James W. Glosser, Associate Administrator, Animal and Plant Health Inspection Service, Room 313–E, Administration Building, 12th and Independence Avenue, SW., Washington, DC 20250. USDA policy statement for research activities: Dr. John Patrick Jordan, Administrator Cooperative State Research Service (CSRS) USDA, Room 304–A, Administration Building, 12th and Independence Avenue, SW., Washington, DC 20250.

Occupational Safety and Health Administration (OSHA) policy statement: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3637, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

National Institutes of Health (NIH) policy statement: Dr. William J. Gartland, Office of Recombinant DNA Activities, Building 31, 3B10, National Institutes of Health, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Dr. David T. Kingsbury, Assistant Director for Biological, Behavioral, and Social Sciences, National Science Foundation, 1800 G Street NW., Washington, DC 20550, (202–357–9854).

SUPPLEMENTARY INFORMATION: The June 26, 1986 Federal Register (51 FR 23302, "the June 26 notice") contained the coordinated framework for regulation of biotechnology including announcements of agencies' policies and requests for public comment. The closing date for comments was August 25, 1986. The BSCC, EPA, and USDA received requests to extend the comment period. Accordingly, the comment period is extended to September 26, 1986. This extension does not affect agencies' policies that became effective on June 26, 1986. The statement on page 23306 of the June 26 notice that "definitions are effective immediately" refers only to the agency definitions which became effective on June 26, 1986.

USDA's Animal and Plant Health Inspection Service (APHIS), in Part III of the June 26, 1986 Federal Register, announced and requested comments on a proposed rule for the "Introduction of Organisms and Products Altered Or Produced Through Genetic Engineering Which Are Plant Pests Or Which There Is Reason To Believe Are Plant Pests." USDA in the same Part III also issued an "Advanced Notice of Proposed USDA Guidelines For Biotechnology." The closing date for comments for both of these was August 25, 1986. These comment periods have been extended to September 26, 1986 by the separate notices following this notice.

Barbara J. Diering,

Special Assistant to the Executive Director, Office of Science and Technology Policy.

August 11, 1986.

[FR Doc. 86–18517 Filed 8–14–86; 8:45 am]

BILLING CODE 3170–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 330 and 340

[Docket No. 86-348]

Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe are Plant Pests; Extension of Comment Period

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This document extends the comment period by 32 days, until September 26, 1986, for a proposed rule entitled, "Introduction of Organism and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests." This action will provide interested persons additional time to prepare comments on the proposed rule.

DATE: Written comments on the proposed rule must be received on or before September 26, 1986.

ADDRESSES: Send comments to Dr. James W. Glosser, Associate Administrator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 313–E, Administration Building, 14th and Independence Avenue, SW., Washington, DC 20250. Please state that your comments are in response to Docket Number 85–351. Written comments received may be inspected at Room 313–E of the Administration Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: John R. Wood, Director, Biotechnology and Environmental Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 600, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8896.

SUPPLEMENTARY INFORMATION: On June 26, 1986, the U.S. Department of Agriculture published in the **Federal Register** (51 FR 23352–23366) a proposed rule that was entitled "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests", and that would restrict the importation, interstate movement, and release into the environment of these organisms and products. The proposed rule provided that written comments would be accepted for 60 days, until August 25, 1986. We received several requests asking that we extend the comment period for 30 days. One request asked that we extend it for 60 days. Persons seeking an extension indicated that the issues raised in the proposed rule are complex and that additional time is needed to prepare substantive comments.

We believe that it is in the public interest to extend the comment period, and we are extending it for 32 days, until September 26, 1986. A 32-day extension has been chosen because we believe that an additional 32 days will provide interested persons sufficient time to prepare detailed and substantive comments and yet enable us to promulgate a final rule within a reasonable time after the publication of the proposed rule.

Done at Washington, DC, this 12th day of August 1986.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86–18515 Filed 8–14–86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF AGRICULTURE

Advanced Notice of Proposed USDA Guidelines for Biotechnology Research; Extension of Comment Period

AGENCY: Department of Agriculture.

ACTION: Notice of extension of comment period.

In the **Federal Register** of June 26, 1986, the U.S. Department of Agriculture (USDA) published an Advanced Notice of Proposed USDA Guidelines for Biotechnology Research (USDA Guidelines) as one part of an interagency Coordinated Framework for Regulation of Biotechnology (51 FR 23367). Subsequent to that publication, several of the agencies involved made decisions to extend the comment period on their portions of the document for an additional 32 days to September 26, 1986. These decisions were made in response to specific requests due in part to the complexity of the technical questions on which comments were invited in the June 26, 1986 notice.

USDA observes that it may be advantageous to synchronize the comment period on the USDA Guidelines with those of the other agencies involved. Such an extension would help to avoid confusion on the part of potential commentors and it would provide additional time for the preparation of comments on the more technical aspects of the USDA Guidelines. Finally, many institutions affected by the USDA Guidelines may be in summer recess during much of the original comment period and the extension would give them additional time to develop comments.

Therefore, USDA extends the comment period for the Advanced Notice of Proposed USDA Guidelines for Biotechnology Research from August 25, 1986 to September 26, 1986.

Dated: August 8, 1986.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 86-18519 Filed 8-14-86; 8:45 am]

BILLING CODE 3410-22-M

federal register

Friday
August 15, 1986

Part VI

Department of Health and Human Services

**Health Care Financing Administration
Medicare Program; End-Stage Renal Disease Program; Composite Rates and Methodology for Determining the Rates; Final Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-374-FN]

Medicare Program; End-Stage Renal Disease Program: Composite Rates and Methodology for Determining the Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This notice revises the methodology for determining the composite rates for prospective payment for outpatient maintenance dialysis services and sets forth rates based on the revised methodology. We based the new rates on the most recent audits (1983) of facility costs. Additionally, in computing the rates we used a combination of the existing 1980 Bureau of Labor Statistics wage index and the HCFA gross hospital wage index The combined index reflects the latest Metropolitan Statistical Areas designated by the Executive Office of Management and Budget.

DATE: This final notice is effective on October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Daniel Driscoll, (301) 597–1804.

SUPPLEMENTARY INFORMATION

I. Background

Section 1881(b) of the Social Security Act (the Act) requires the Secretary to pay for outpatient maintenance dialysis services under a prospective payment system that promotes home dialysis. This payment system must either pay for home dialysis under composite rates (that is, the same rate is paid for dialysis at home as in a dialysis facility) or use some other method that, after detailed analysis, is determined to be more efficient and promote home dialysis more effectively.

On February 12, 1982, a notice of proposed rulemaking was published in the **Federal Register** (47 FR 6556) that proposed a prospective, composite rate payment system for outpatient maintenance dialysis that would implement section 1881(b) of the Act. Under that proposal, each facility was to receive a certain payment rate per treatment, adjusted for geographic wage differences, regardless of whether the treatment was furnished in the facility or at the patient's home. We proposed to set separate rates for hospital-based and for independent dialysis facilities.

On May 11, 1983, we published a final rule (48 FR 21254) that changed some of the elements of the February 12, 1982 proposed rule and that incorporated updated information on geographic wage differences. As a result, the average payment rates were projected to be $126.59 per treatment for independent facilities and $130.59 per treatment for hospital-based facilities. These average payment rates were calculated based on the overall effect of the geographic wage indexes on the per-treatment base rates of $122.91 for independent facilities and $126.76 for hospital-based facilities.

The regulation on payment for outpatient maintenance dialysis treatments is located at 42 CFR 405.439. That regulation does not include actual payment rates but does set forth the procedure for promulgating rates. Under § 405.439(i)(2), a notice must be published in the **Federal Register** (with opportunity for prior public comment) when payment rates are changed as a result of a change in the methodology for setting the rates. Accordingly, we published a notice in the **Federal Register** on May 13, 1986, (51 FR 17537) that proposed to change the methodology for setting the rates.

II. Proposed Changes

The May 13, 1986 proposed notice provided for the following:

- In determining the composite rates, the facilities median costs would be weighted by the number of *treatments* in each stratum (a statistical grouping of facilities based on the number of dialysis stations in each facility) rather than weighting by the number of *facilities* in each stratum.
- We would update the composite rates for independent and hospital-based facilities using the most recent audit data on the costs of infacility and home dialysis and the most recent average national percentages of home dialysis patients.
- We would use the HCFA gross hospital wage index described in the prospective payment system regulation published in the September 3, 1985 **Federal Register** (50 FR 35661) to replace the urban and rural wage indexes that were published in the May 11, 1983 final rule.
- We would continue to apply the maximum and minimum rate limitations published in the May 11, 1983 final rule; that is, no facility's payment rate could exceed $138 per treatment, and no facility's payment rate could be calculated using a wage index of less than 0.9.

We proposed to set the base composite rates for outpatient maintenance dialysis at $113.47 for independent facilities, and $117.89 for hospital-based facilities After applying wage indexes to these base rates, the estimated average payment rates would have been $115.40 for independent facilities, and $119.70 for hospital-based facilities.

Since the publication of the proposed notice, we used a more accurate method for estimating the average payment rates. As a result, these payment rates would be $117.94 for independent facilities and $122.10 for hospital-based facilities.

The notice contained an explanation of how we proposed to establish the composite rates and a discussion of the revised rates for independent and hospital-based facilities based on audits of facilities' costs.

The notice did not propose to change the regulations regarding payment for peritoneal dialysis, self-care training, and home dialysis. Those regulations would remain the same as they were published in the final rule on May 11, 1983 (48 FR 21254). The notice (51 FR 17541) briefly summarizes those provisions.

III. Analysis of and Responses to Public Comments

During the comment period, we received approximately 3,000 pieces of correspondence commenting on the proposed notice. Of these, approximately 2,500 were form letters. The commenters included hospital-based ESRD facilities, independent ESRD facilities, physicians, ESRD facility staff, ESRD associations, ESRD patient advocacy groups, and ESRD patients. The comments and our responses to those comments are discussed below.

A. Home Dialysis

Comment: Several commenters stated that home dialysis has not and would not increase because of the composite rates. They stated that any increase is attributable to patients who live in rural areas who have problems with access to infacility care. They stated that continuous ambulatory peritoneal dialysis (CAPD) accounted for most new home dialysis patients and CAPD costs more than facility dialysis in an independent facility. Some commenters stated that the increase in home dialysis fell short, by 13 percent, of projections based on the 1983 composite rates, and lower rates will not promote home dialysis either, because facility rates decrease when less expensive home dialysis use increases.

Response: We promote home dialysis because the law (section 1881(b)(7) of the Act) requires us to do so and

because of the social, medical, and economic benefits of home dialysis. We agree that CAPD accounts for a large number of home patients (65.6 percent); therefore, we have factored this data into the formula by separating the costs of CAPD and home hemodialysis and weighting those costs, respectively, by the percentage of patients using each. Our audited data indicate that home dialysis in general, and CAPD specifically, is slightly less costly than outpatient dialysis furnished in independent facilities.

Comment: Several commenters stated that facilities could not make up the reduction in the proposed payment rates by increasing their home patient population. They gave the following reasons for not being able to increase the number of home patients: (1) some hospitals only refer patients who require infacility care; (2) many ESRD patients who would otherwise be candidates for home dialysis become transplant recipients instead; (3) home dialysis is saturated now—the percentage of home patients has been constant for the past 3 years (19 percent); (4) a higher percentage of patients now are older and sicker and many cannot be treated at home.

Response: While the home dialysis percentage has not increased significantly since 1983 (17 percent vs. 19.4 percent), our data show that home programs are successful in rural and urban settings, and some States have over 30 percent of their ESRD patients on home dialysis. Our responsibility is to set the rate, using the best data available, at an amount that is reasonably related to the cost of furnishing the service. We have made several changes to the proposed rates (see section IV of this notice) that will mitigate the financial pressure on many facilities.

Comment: One commenter stated that he successfully promotes home dialysis by providing a full time staff person for each home dialysis treatment, but he alleges that, under the proposed rates, this would not be possible.

Response: The law (section 1881(b)(7) of the Act) requires us to promote the use of home dialysis, but the costs associated with paid home aides are specifically excluded in setting the composite rates. Congress recognized that paying these costs would eliminate the savings associated with home dialysis (H.R. Rep. No. 97–143, Part 1, 97th Cong., 1st Sess. (1981)).

Comment: Commenters believe that we proposed to reduce the composite rates because the use of less expensive home hemodialysis has increased and adjusted the rate downward to reflect the increased use of home hemodialysis. The commenters believe this increase to be only two percent and that the rates should not be reduced by the amount proposed in the May 13, 1986 notice.

Response: As discussed in our May 13, 1986 notice, our proposal to reduce the composite rates was based on our audited cost data and the new methodology of weighting by treatments. We did not propose to revise the composite rates based solely on an increase in home dialysis. Of course, the new composite rates do reflect the current percentage of home dialysis patients.

B. Small Facilities

Comment: Some commenters believe that small facilities would be forced to close and that only large corporate (chain) dialysis facilities could exist under the proposed rates because those facilities have lower costs. Commenters stated that chain facilities are operated under common corporate policies that do not offer a choice of the mode of dialyzing (for example, home vs. facility, and hemodialysis vs. CAPD). The commenters believe that small facilities enhance patients' access to care (for example, patients' transportation costs could increase without small local facilities), offer variety in treatment modality (for example, home dialysis that is seldom offered by for-profit dialysis facilities), and provide alternatives that promote quality care.

Response: The law (section 1881(b)(7) of the Act) requires that the payment system for ESRD services promote efficiency in delivering dialysis care. Small facilities may not be able to reduce costs to the same extent as larger facilities. If a facility is an isolated essential facility, it may qualify for an exception to its rate, and we invite small rural facilities to apply for this exception (see section III H of this notice). We will also reduce the impact of the new rates on facilities located in low wage index areas by phasing in gradually the use of the new HCFA gross hospital wage index (see section IV B of this notice).

Comment: A commenter stated that HCFA believes that large facilities will absorb the patient population of small facilities that close. The commenter disagrees with this belief because officials in his State would only approve a new unit with the number of dialysis stations needed at the time of approval, without considering the patients from any facilities that may close in the future.

Response: Certificate of need determinations are a State, not a Federal, responsibility; however, generally, approval of a facility is based on a demonstration of need in the area without consideration of possible closings of existing facilities in the future. In an emergency situation, the ESRD program provides that a new facility may become operational under the special purpose dialysis facility procedures (see 42 CFR 405.2102(e)(5) and 405.2164).

C. Growth of Dialysis Facilities

Several correspondents commented on our statement that the growth of dialysis facilities is an indication that the composite rates are set at an adequate level. Some commenters alleged that—(1) the rate of growth of dialysis facilities prior to the 1983 composite rates was greater than the growth rate for recent years; (2) facility growth must be compared to growth of the patient population to be meaningful; (3) the increase in facilities is due to the increase in patients—not high reimbursement; (4) new facilities are, for the most part, satellites or branches of existing facilities so that administrative costs can be shared; (5) "new" facilities are really change-overs from pre-existing hospital units; and (6) the facility-to-patient ratio has declined.

Response: Our point in stating that new facilities continue to enter the dialysis market was that the composite rate has been sufficient to maintain adequate capacity. The following data show the growth in patients, dialysis stations, and dialysis facilities since 1983, the year that the composite rate payment system was implemented. The measure of capacity is expressed as the ratio of outpatient dialysis patients to stations. A dialysis station consists of the floor space, dialysis machine and any auxiliary equipment necessary to dialyze a patient. Assuming two shifts per day at dialysis facilities and three dialysis treatments per week per patient, each station can accommodate four patients per week. This would correspond to a ratio of 4:1. In 1985, the ratio was 3.83:1, or 3.83 patients for every dialysis station. Therefore, there continues to be excess capacity above the minimum needed to treat the dialysis population. Furthermore, some patients dialyze on a twice per week schedule, some patients miss treatments for various reasons (for example, they are hospitalized), and some facilities operate three shifts per day. All of these factors increase treatment capacity above a 4:1 ratio. It would be neither efficient nor necessary to set the composite rate at a level that would encourage greater treatment capacity

than is required to treat the dialysis population.

Our data on these points follow:

Year	Number of infacility dialysis patients	Number of dialysis stations	Number of dialysis facilities
12/31/83	58,342	15,506	1,247
12/31/84	63,245	16,594	1,290
12/31/85	68,385	17,845	1,380

Year	Ratio of patients to stations
1983	3.76:1
1984	3.81:1
1985	3.83:1

Year	Ratio of stations to facilities
1983	12.4:1
1984	12.9:1
1985	12.9:1

Year	Annual increase in number of patients
1983–1984	8.4%
1984–1985	8.1%

Year	Annual increase in number of stations
1983–1984	7.0%
1984–1985	7.5%

In addition, from the period May 11, 1983 (the date the final composite rates regulation was published in the **Federal Register**) until July 10, 1986, there was a net increase of 32 hospital-based facilities and 185 independent facilities for a total net increase of 217 ESRD facilities located in 41 States. Of these facilities, 61 were rural facilities located in 25 States. We believe these data further affirm the continuing growth of ESRD facilities in both urban and rural localities.

D. Effect of Reducing Composite Rates

Some commenters suggested that the proposed notice did not provide a detailed analysis of the effects and impact of the proposed rate reduction. They suggested that we identify the number and type of dialysis facilities that would be affected. Further, the commenters requested that we study the effects of the 1983 composite rates (for example, facilities' cost cutting measures such as, reuse of dialyzers and supplies) on the quality of care before the rates are reduced further.

Response: In response to the criticism that the proposed notice did not provide an adequate analysis of the impact of the rate reduction, we believe that we adequately address the effects of the new rates in the impact analysis in this final notice. Concerning dialyzers and supplies, we neither encourage nor discourage their reuse. The decision to reuse dialyzers and supplies is made by the medical professionals responsible for a patient's care. We set the composite rates based on the cost experience of a cross-section of all dialysis facilities in the country as of November 1982. Therefore, we believe the composite rate mirrors medical practice in the dialysis community.

Comment: Some commenters stated that because they already reuse supplies, the only costs left to reduce are labor costs. However, commenters gave several reasons why they believe they could not make such reductions: (1) some States (for example, Alabama and Florida) regulate staff duties and responsibilities; therefore, facilities are limited in their use of lower-salaried personnel; (2) dialysis facilities compete with hospitals for qualified personnel, thus keeping labor costs high; (3) the patient population is older and sicker now, requiring more qualified, and therefore, higher-salaried staff; and (4) the recent notice published in the **Federal Register** (July 2, 1986, 51 FR 24226) that lowered the physicians monthly capitation payment for dialysis services will reduce physician involvement and increase the need for more gualified facility staff.

Response: We are basing the new composite rates on the best, most recent data available to us and these data reflect the way in which medicine is practiced, including the complement of personnel used to staff a dialysis facility. We cannot predict future staff complements, but we are conducting a national audit that will show present costs for staffing.

Comment: Various commenters discussed the interrelation of economy and efficiency and guality of care. They stated their concerns including that certain cost-cutting measures might impinge on quality of care, use of fewer and less qualified staff, increased reuse of supplies, poorer techniques for reuse, and facilities inappropriately placing patients on home dialysis.

Response: The conditions of participation for ESRD facilities (42 CFR Subpart U) establish the requirements that we believe are necessary to ensure quality care. Nothing in the composite rate system allows facilities to depart from these requirements. Facilities are surveyed periodically to ensure that they continue to be in compliance with these requirements.

The medical community does not agree on any one model for the dialysis procedure. There is a wide variation among the staff complements and practices at various facilities. In the random sample of facilities that were audited, we included facilities of all types. In the absence of a demonstrated need for a particular method of operation to ensure patient safety, medical practitioners should be permitted to devise appropriate methods of treatment. We will continue to monitor the program to ensure that quality standards are maintained.

Concerning the assumption that the lower rates will force facilities to inappropriately place patients on home dialysis, we have no evidence that patients are forced on home dialysis where it is inappropriate. We do not believe that facilities will perceive such a strategy as cost-effective, since patients who are unsuitable for home dialysis are expensive in terms of support services that must be furnished by the facility, including back-up dialysis in the facility. Any increased hospitalizations for the patients would also reduce the facility's revenue. Whether a patient dialyzes at home is a decision for the medical professionals and the patient to make. For these reasons, we do not believe facilities will inappropriately place patients on home dialysis. The statute requires us to promote home dialysis through the payment system.

Comment: Commenters were concerned that in some cases the change in their rates would be too great to accommodate, especially within the usual 30-day period before the effective date.

Response: The change in the rate that we proposed in the May 13, 1986 **Federal Register** was due in part to the proposed use of the September 3, 1985 HCFA wage index (50 FR 35646) that differs from the 1980 Bureau of Labor Statistics (BLS) wage index that is currently used. Since the publication of the May 13, 1986 proposed notice, we have revised the September 3, 1985 HCFA wage index and published the revised HCFA wage index on May 30, 1986 (51 FR 19738) as part of a final rule on home health agency costs. In computing facilities composite rates, we will use that revised HCFA wage index, published on May 30, 1986.

In order to mitigate the effects of a sudden large decrease in any facility's composite rate as a result of using the May 30, 1986 HCFA wage index, we will phase-in using the HCFA wage index over a five-year period by combining the existing BLS index and the HCFA wage index, including any updates to the HCFA wage index. For example, the first year after publication of this notice, each facility's rate will equal 80 percent

of the facility's rate using the BLS wage index plus 20 percent of the facility's payment using the HCFA wage index. The schedule for implementing the Five-year phase-in of the HCFA wage index appears in section IV C of this notice.

Comment: Some commenters believe the proposed rate is too low, and cited the fact that two-thirds of the audited hospitals have costs per treatment above the average proposed payment rate.

Response: As a result of the change in the wage index described above and, again, in section IV of this notice, the average rate reduction for hospitals will be $4.43 per treatment compared to $8.49 as proposed in the May 13, 1986 notice. The comparable figures for independent facilities are $6.79 and $8.65, respectively. Thus this change will lessen the impact of the rate reductions on both hospital and independent facilities. Also, a facility that has costs in excess of the composite rate may submit an exception reguest as described in 42 CFR 405.439 (f) and (g).

Comment: A commenter stated that a reduction in the composite rate will result in more patients with medical difficulties, that are presently handled in outpatient units, being referred to hospitals for inpatient dialysis because these patients are more expensive to treat.

Response: Peer Review Organizations review Medicare inpatient services for medical necessity and appropriateness. If a pattern of abuse is detected, intensified review will follow and appropriate corrective action will be taken. Unnecessary hospitalization inconveniences patients and needlessly utilizes patients Part A benefits, thereby raising the possibility of patients not having Part A benefits when they are really needed. It also abuses the health care system by expending resources which could be used to finance necessary care. We do not believe that physicians, on the whole, would intentionally inconvenience their patients and abuse the health care system in order to maximize facilities incomes.

Comment: One commenter stated that net revenues from the ESRD program are invested for research and development to identify advancements that will reduce program costs. The commenter believes that a reduction in payment will stifle advancements in dialysis treatment technology. Other commenters stated that amenities (for example, television sets, snacks, and ice machines) will be eliminated.

Response: Research and development costs and the costs of these amenities are not allowable costs under the Medicare program, and, therefore, may not be considered in setting the ESRD composite rates.

Comment: Several commenters stated that the Gramm-Rudman-Hollings legislation (Pub. L. 99–177) is reducing Medicare payment below facilities costs.

Response: We have set the composite rates based on the best data available to us. Pub. L. 99–177 is a statutory action by Congress that is independent of the composite rate. To the extent that it is applicable to certain Federal expenditures such as Medicare payment, it applies to the ESRD composite rates. Also, a facility that has costs in excess of the composite rate may submit an exception request as described in 42 CFR 405.439 (f) and (g).

Comment: Commenters noted that we speculated in our May 11, 1983 final rule that ESRD suppliers would reduce their prices as a result of our reducing the composite rate at that time. The commenters believe that the 1983 reduction forced some domestic manufacturers of dialysis supplies to terminate business and these supplies now come mostly from overseas.

Response: We note that suppliers did advertise lower prices in response to the 1983 composite rates announcement. HCFA is responsible for setting the composite rates at the most appropriate level commensurate with the cost of furnishing dialysis. The rates are based on facilitie's actual costs, including the cost of supplies. Where facilities purchase supplies is dictated by facility choice and the marketplace and not by HCFA

E. Audit Data

Comment: Some commenters criticized the cost data (from 1982) as being outdated and not reflecting inflation. The commenters noted that the patient mix now is more expensive to treat than in 1982; for example, there are more aged patients, more patients with communicable diseases who must be isolated, and more of the healthier dialysis patients have received transplants, leaving a generally sicker dialysis patient mix.

Response: The data we used are the best, most current data available. They do not include an adjustment for inflation because we have no evidence that the overall cost of furnishing dialysis follows inflation. Some component inputs of the dialysis service (for example, salaries) appear to follow inflation, but other efficiencies in furnishing dialysis offset these increases. Furthermore, some components of cost have experienced deflation; for example, the price of dialyzers has decreased by approximately 30 to 50 percent.

As we noted in the proposed notice, taking into account estimated adjustments for disallowances normally associated with auditing, unaudited cost data for 1984 reported by the same independent facilities that were in the 1983 national audit indicate that costs are continuing to decline. The General Accounting Office (GAO), in a report discussed in more detail below, reached a similar conclusion. Because the audited data being used predate the 1983 change to composite rates (which created new incentives for cost reduction), GAO concluded that use of more recent data could show lower costs and result in lower rates than those proposed. GAO also noted that in a number of comments it was alluded that costs had decreased since establishment of the composite rates. Since we have no evidence, and the comments supplied no evidence, that aggregate costs for dialysis are increasing, an inflation adjustment is not warranted.

Comment: Commenters requested that we identify more explicitly the audit adjustments made to the costs incurred by dialysis facilities.

Response: We made the following audit adjustments based on Medicare reimbursement principles: (1) Limited recognition of compensation to medical directors and administrators to $32,000; (2) bad debts; (3) costs due to related organizations and home office; (4) return on equity capital; (5) services furnished under arrangements to another hospital (These services are reimbursable by the other hospital and not directly under the facility's composite rate payments.); and (6) miscellaneous adjustments (for example, amounts of interest expenses, amounts of depreciation, and costs not related to patient care). These are the same types of adjustments made in our previous national ESRD audit.

For example, auditors' reductions of compensation to medical directors and administrators included reductions at two independent facilities that paid their owners $449,000 and $300,000, respectively.

Comment: Several commenters believe we wrongly reduced independent facilities' costs by 17.7 percent.

Response: As explained above, we applied usual Medicare principles of reimbursement to determine the costs that were allowable. This is the same application that we used in the previous national ESRD audit that established the current payment rates.

Comment: Commenters inquired about the nature of the 143 audited facilities (for example, how many were for-profit, part of a chain, and local non-profit) and how they were selected.

Response: We do not have sufficient data to be able to answer each of the questions that the commenters raise. However, the 143 audited facilities were selected by scientific random sampling techniques and, therefore, are representative of the universe of facilities. The universe consisted of all certified ESRD facilities providing outpatient dialysis treatments. The frame (a physical representation of the universe to be sampled) consisted of a listing of 1,147 ESRD facilities from our November 1982 provider file. Inspection of the list revealed that seven facilities had no outpatient dialysis stations. These facilities are believed to be providing primarily inpatient treatments and were, therefore, deleted as not properly part of the frame. The frame was separated into two strata—hospital-based facilities and nonhospital-based facilities. Within each of these, three strata were formed on the basis of the number of dialysis stations. Stratum boundaries were formed using the frequency distribution of the number of stations.

Comment: One facility stated that since 1980 it has experienced the following increased expenses: (1) Labor—7 percent; (2) technological advancements—7 percent; (3) building expenses—10 percent; and (4) supplies—5 percent.

Another facility stated that the composite rate is lower than its costs because the facility's staff is comprised only of registered nurses who are paid more than other less qualified personnel.

Response: The results of our national audit are representative of the universe of dialysis facilities. We recognize that different facilities may furnish the dialysis service in different ways. The composite rates are based on valid national data that reflect the costs associated with the various ways of conducting business. An individual facility may incur some costs that others do not incur; but it will not always incur all costs that other facilities incur.

Comment: Commenters believe that the cost data for home dialysis were derived from only a few large efficient facilities and, therefore, that they are not representative.

Response: We chose home dialysis programs to be audited in such a way as to sample as many of the facilities that furnished the full range of home services, supplies, and equipment as possible. We believe this approach resulted in the most complete picture of the total cost of home dialysis. Not all of the 17 facilities audited for home dialysis costs were large. One had only 244 home dialysis treatments (the equivalent of two patients), two had only 700 home dialysis treatments (the equivalent of five patients), and one had only 1,200 home dialysis treatments (the equivalent of nine patients).

Comment: Commenters stated that CAPD costs more than home hemodialysis and current CAPD population figures are not reflected in the old data.

Response: We agree with this comment to the extent that the cost of home dialysis should reflect the most current data on the percentage of home dialysis patients who use CAPD and home hemodialysis. Therefore, we have substituted our most recent data on home dialysis. We discuss this adjustment in section IV of this notice and have adjusted the rate accordingly.

F. Methodology

Comment: Some commenters believe that we did not explain our rationale for changing the ratesetting methodology to weight by treatments.

Response: Under section 1881(b)(7) of the Act, we are required to base the composite payment rates on the relative costs of home and infacility dialysis. Since the base payment rate is a per treatment rate that applies uniformly throughout the country, we want to use a cost calculation that best reflects the per treatment costs actually being incurred in the national market place considered as a whole. A more representative reflection of these costs is obtained by determining the costs of a typical treatment rather than the costs of a typical facility, and that in turn is achieved through weighting by treatments rather than by facilities.

Comment: Commenters asked why we weighted by treatments in calculating the cost of infacility dialysis, but did not weight by treatments in calculating the cost of home dialysis.

Response: In the case of both infacility and home dialysis, we weighted the costs by the volume of services, that is, the number of treatments for infacility dialysis and the number of patients for home dialysis as CAPD patients dialyze continually, not in discrete treatment sessions.

Comment: Some commenters believe that there has been no public input in formulating the proposed system.

Response: The purpose of publishing the May 13, 1986 proposed notice was to provide an opportunity for public comment, and a large number of individuals and entities submitted comments. In addition, we solicited public input when we originally proposed to institute a composite rate reimbursement system for ESRD services via the proposed rule published February 12, 1982 (47 FR 6556).

G. Wage Index

Comment: Several commenters responded to the use of the HCFA wage index and believe that it: (1) Decreases while labor and supply costs keep increasing; (2) results in too great a variation between the current BLS wage index and the proposed wage index; (3) is inaccurate for dialysis and that we should use a dialysis specific wage index; (4) is inaccurate for certain areas (for example, Anaheim, Los Angeles, and San Diego in California, and Durham and Wake counties in North Carolina) and should be reevaluated; and (5) should allow facilities to offer salaries comparable to those that hospitals offer, since the facilities compete with hospitals to obtain qualified staff.

Response: When the composite rate was initially implemented in 1983, we considered developing a wage index based on salary data from Medicare ESRD cost questionnaires. These data were not highly reliable because they did not represent audited costs and were not sufficiently accurate and detailed to develop an index. We will continue to reevaluate this proposal for future rate computations.

We believe that the HCFA wage index is the most accurate and most appropriate index to use at this time. (See section V of this notice for a description of the index and how it was calculated.) However, in order to cushion the effect of the variation in payment rates resulting from the change in weighting by treatments and using a different wage index, we will phase-in using the HCFA wage index over a five-year period. We will combine, in progressive proportions, the rates calculated from the current 1980 BLS index and the rates calculated from the HCFA wage index (May 30, 1986, 51 FR 19738) including any updates to the HCFA wage index. (See section IV of this notice for an explanation of this phase-in of the HCFA wage index.) In addition, we will continue to use a minimum wage index value of 0.9.

H. Exceptions Process

Comment: One commenter noted that the proposed notice did not mention the process for requesting an exception to the prospective payment rate and asked if we are retaining it as promulgated in the May 11, 1983 final rule (48 FR 21257).

Response: We are retaining the current exceptions process. We did not specifically mention the exceptions process because the proposed changes dealt with setting the composite rates, and this notice will not affect the regulations governing the ESRD program.

Comment: Some commenters were concerned about the number of small rural facilities that they believe would not be able to continue business under the proposed rates. Several commenters criticized the exceptions process as being too cumbersome and time-consuming to help facilities in need.

Response: A major objective of the composite rate system is to maintain access to high quality care while maintaining efficient delivery of services. In this regard, we wish to emphasize the availability of the exceptions process to these facilities. Small rural facilities may seek an exception under the criterion "Isolated Essential Facility" (see 42 CFR 405.439(g)(2)). In the past, few facilities have availed themselves of this exception. We invite small, rural facilities that cannot take advantage of economies of scale to apply for this exception if their new rate is less than their costs.

We are initiating a policy that exception requests under this category be processed on a priority basis both by the fiscal intermediary servicing the small facility and by HCFA headquarters with a view toward protecting patients' access to care and assuring adequate payment to small, essential facilities.

I. Suggestions for Achieving Program Savings

Comment: Several commenters had the following suggestions for how we could achieve program savings without reducing the composite rate: (1) Increase copay; (2) extend the waiting period for entitlement; (3) extend the applicability of the secondary payer rule to two years; (4) develop a comprehensive catastrophic insurance plan; (5) allow facilities to bill beneficiaries the difference between facilities' costs and their rate; (6) include ESRD under Medicare HMOs; and (7) save money by promoting kidney transplants by (a) implementing a nationwide computer registry, (b) encouraging the public to donate organs, or (c) paying for immuno-suppressive drugs.

Response: Suggestions 1 through 6 are beyond HCFA's current authority and would require a change in the law. Therefore, they are beyond the scope of this notice. However, with respect to item 7, efforts are underway to implement a nationwide computer registry of transplants and we continue to encourage organ donations. Payment for immuno-suppressive drugs was proposed by Congress, but never enacted by Congress.

Comment: Some commenters suggested that to ease the burden of the composite rate reduction on ESRD facilities, it should be phased in over time.

Response: We have been pursuaded by these comments to phase-in the use of the most recent HCFA wage index over the next five years. See section IV of this notice for a description of the five-year phase-in and other adjustments we have made to the rate in order to mitigate possible financial pressures on facilities.

Comment: Commenters recommended that we set the hospital rate using only hospital costs rather than a combination of hospital and independent facility cost data.

Response: We have used a ratesetting methodology that differentiates between hospital-based and independent facilities in accordance with the statute. Hospital payment rates will be, on the average, about $6 more per treatment than the payment to independent facilities. The different rates result from: (1) Our using a factor for home dialysis which reflects that more hospital-based facility patients are home dialysis patients, (2) our recognition of the higher general overhead costs incurred by hospitals, and (3) an overall five percent upward adjustment for hospitals to allow for possible deficiencies in hospital cost data and to mitigate the effects of the composite rate on hospitals that arise from their having a greater percentage of home dialysis patients than independent facilities.

The statute does not prescribe in detail the method for setting dialysis payment rates, but does require a method that distinguishes between hospital-based and independent facilities and that promotes efficiency. We must set the rates on a cost-related or other economical basis. We believe that combining the cost data from all facilities and making adjustments to the data base to reflect legitimate cost differences incurred by hospital-based facilities as a class, is more accurate and equitable than using separate sets of data to set separate rates. This method—

- Recognizes a similar cost for a similar service;
- Recognizes that some hospitals have costs as low as the average independent facility; and
- Does not penalize the efficient, lower-cost, independent facilities for their efficiency.

We believe this methodology represents a reasonable means of achieving the dual statutory mandates of promoting efficiency and using a ratesetting methodology that differentiates between hospital-based and independent facilities.

Comment: Commenters recommended that we adjust each facility's rate by the amount of dialyzer reuse.

Response: Under this prospective payment system, we do not intend to adjust individual facilities' rates to their actual costs, because this removes the incentive to be efficient. We set the composite rates based on the audits of randomly-selected facilities. Forty-nine percent of the facilities in the audits reused dialyzers and we included their costs in setting the rates. Reuse of dialyzers is a facility choice, similar to staffing mix and other aspects of operation. In addition, some facilities may choose to use the savings from reuse to offset some other cost of their operation.

Comment: Some commenters believe that the ratesetting methodology should include an automatic inflation factor.

Response: The ESRD payment system is intended to contain costs and promote efficiency by allowing facilities to retain per treatment payments in excess of their costs. Automatic inflation adjustments are self-fulfilling, encourage cost increases and do not, therefore, promote efficiency. Moreover, as we stated in section III E of this notice, our cost data indicates that the overall cost of furnishing dialysis has not followed general inflation. We will continue to monitor the cost of furnishing dialysis. For example, we are conducting a national audit of ESRD facilities' costs this year.

J. Solicited Comments

In the proposed notice we specifically solicited comments on three alternatives that we did not adopt in this final notice: (1) Whether to change or eliminate the 105 percent add-on factor for hospital-based facilities; (2) whether to trend the home patient percentage forward when calculating the weighting factor for home costs; and (3) whether to continue to compute the independent facility rates using, in part, overhead costs incurred by hospital-based facilities. We received the following comments:

105 Percent Add-on Factor

Several hospitals commented that this factor should be maintained. Commenters stated that the Medicare

program and the Joint Commission on the Accreditation of Hospitals require hospitals to provide many services that result in higher costs (for example, employee education, security, emergency and trauma centers). Furthermore, commenters stated that patients who do not have secondary insurance to pay their coinsurance sometimes are referred by independent facilities to hospital-based units. One commenter stated that hospitals treat a sicker and more complex patient mix than independent facilities and that several studies support this belief. The commenter stated that the five percent add-on is arbitrary and suggested that a study be done to determine the appropriate amount.

Trend Home Patient Percentage Forward

Some commenters stated that it would be illogical and unfair to trend the home patient percentage forward while using cost data that are four years old. They believe it would be a disincentive to increase home dialysis since a decrease in home dialysis would yield a higher payment rate. The commenters believe that we should use a single national average home patient percentage for both hospital-based and independent facilities since hospitals are now penalized for having a higher home patient percentage. One commenter wanted to know the source of the data and how the trending would be accomplished.

Independent Facility Rate Using Hospital Overhead

We received comments both for and against this alternative. Some commenters stated that hospitals incur costs that are not incurred by independent facilities. Commenters included examples, such as patient education, audiovisual services, library, cafeteria and chaplain services. They stated that hospitals have on hand many specialized forms of medical care (for example, cardiology, EKGs, EEGs, and laboratory) that are available immediately to the patient should the need arise. Commenters stated that maintaining the availability of these services is expensive compared to the services of an independent dialysis facility. Certain costs (for example, utilities) are allocated on the basis of square footage even though the dialysis unit is not open 24 hours a day. Therefore, these costs are excessively allocated to the dialysis unit. On this basis, commenters believe that independent facilities' rates should not include these costs. One commenter objected by stating that the alternative would eliminate independent facility overhead. Another commenter misunderstood the ratesetting methodology and was in favor of this alternative only because the commenter believed that the hospital rate would be lowered if the independent rate was lowered.

Response: We have considered all the comments received on these three alternatives and we will continue to monitor the effects of these factors on the composite rate. However, we are not implementing any of the alternatives at this time because additional analyses of data are necessary. We will continue to examine these issues.

K. Extension of Comment Period

Comment: Some commenters requested an extension to the 30-day comment period because they believe that the proposed notice was too complex to analyze and respond to within 30 days.

Response: We believe that the 30-day period was sufficient time for receipt of comments on the proposed regulation changes. The number, diversity, and detail of the comments received support our belief.

L. GAO Review of Proposed Notice and Public Comments

Following publication of the May 13, 1986 notice, the Subcommittee on Health, Committee on Ways and Means, House of Representatives, requested that GAO review the proposal and a sample of the public comments we received on the notice.

GAO analyzed the main issues of the proposal and the public comments on it. The GAO review focused primarily on the following issues:

- The age of the data that we used to compute the proposed rates;
- The use of audited cost data, which removed a substantial portion (about 17 percent) of the costs reported by independent ESRD facilities;
- A change in the method of weighing cost data from a per-facility basis to a number-of treatments-provided basis; and
- The source of the data used to establish costs for patients who dialyze at home.

On July 22, 1986, GAO issued a report concluding that HHS had used the most recent audited data available to develop the proposed rates and had used the data appropriately.

A fifth issue on which the public comments also focused was the adequacy of the data on the effects of the ESRD facility rates set in 1983 on access to and quality of care. GAO concluded that "in our opinion, HHS is in a better position than we to judge the merits of this issue."

IV. Summary of Changes in the Final Notice

As stated in our discussion of the comments and responses, we have made a few changes to the approach we had proposed in the notice published on May 13, 1986. A discussion of those changes follows:

A. CAPD and Higher Percentage of Home Dialysis Patients

We received comments to the effect that CAPD accounts for most of the home dialysis population now and our costs for home dialysis should reflect this fact. We agree with this comment and we have weighted the costs of CAPD and home hemodialysis by the most recent population figures available (December 31, 1984).

B. Revised HCFA Wage Index

We have revised the HCFA wage index that was published September 3, 1985 (see section V of this notice). The HCFA wage index that we will use for purposes of computing payment for ESRD services was published in the **Federal Register** on May 30, 1986 (51 FR 19738) and is reprinted in section V of this notice.

C. Phase-in of HCFA Wage Index

Commenters were concerned that in some cases the change in their rates would be too great to accommodate, especially in the 30-day period usually allowed before a regulation or notice becomes effective. This change in the rate is due in part to the use of a HCFA wage index that is different from the previous BLS wage index. In order to mitigate the effects of a sudden large decrease in any facility s composite rate, we will phase-in using the HCFA wage index over a five-year period by combining the BLS index and the HCFA wage index (May 30, 1986; 51 FR 19738), including any updates to the HCFA wage index. For example, the first year during which this notice is in effect, each facility's rate will equal 80 percent of the facility's payment using the BLS wage index plus 20 percent of the facility's payment using the most recent HCFA wage index. A schedule of the facilities rates showing the progressive proportions by which the rates using the two indexes will be combined follows:

Year	Percentage of the rate using the BLS index	+	Percentage of the rate using the HCFA index
1	80	+	20
2	60	+	40
3	40	+	60
4	20	+	80
5	0	+	100

D. Use of All Data From the Sample of Audited ESRD Facilities

In the proposed notice, we had eliminated the cost data from four facilities that had been part of the audited sample of facilities. These facilities are all atypically small, hospital-based facilities: two were part of the infacility cost audit sample, and two were target rate facilities audited for home dialysis costs. We eliminated these facilities from the data we used to set the proposed rates, because we believed that they were outliers in terms of their small number of treatments. However, we have decided to include all data from the audit sample. Therefore, the final rates in this notice reflect the inclusion of these data.

E. Cost of Home Dialysis

By adding back the data from the two small home dialysis (target rate) facilities and weighting CAPD costs and home hemodialysis costs by the most current data on the number of patients using each modality, the cost per treatment for home dialysis using the HCFA wage index increased from $85.24 in the proposed notice to $96.18.

F. Calculation of Rates

As explained earlier, we will use a combined BLS and HCFA wage index over the next five years to compute the composite rates. We have calculated two separate base composite rates using the two separate wage indexes (BLS and HCFA) We adjusted the audited labor costs by the:(1) 1980 BLS wage index to calculate a BLS base composite rate, and (2) HCFA wage index to calculate a HCFA base composite rate. These calculations resulted in the following treatment costs:

AUDITED COSTS ADJUSTED BY BLS WAGE INDEX

Facilities	Adjusted labor	Nonlabor	Total
Hospitals/Independents	$53.08	$65.28	$118.36
Independent	41.46	60.84	102.30
Hospital-based	71.99	72.49	144.48
Home	16.87	81.15	98.02
Overhead cost differential of hospitals over all facilities			4.48

AUDITED COSTS ADJUSTED BY HCFA WAGE INDEX

Facilities	Adjusted labor	Nonlabor	Total
Hospitals/Independents	$53.37	$65.28	$118.65
Independent	42.46	60.84	103.30
Hospital-based	71.10	72.49	143.59
Home	15.03	81.15	96.18
Overhead cost differential of hospitals over all facilities			4.48

We weighted the above costs by the percentage of patients dialyzing in the facility and at home for 1984. This calculation resulted in the following base composite rates:

BLS Base Composit Rates

(Any discrepancies in the figures are due to rounding)

Independent Rate:	
Labor—	
($53.08×86.5%)+($16.87×13.5%)=	$48.20
Nonlabor—	
($65.28×86.5%)+($81.15×13.5%)=	67.42
Independent Base Rate	115.62
Hospital Rate:	
Labor—	
($53.08×105%×72.5%)+($16.87×105%×27.5%)=	$45.28
Nonlabor—	
([$65.28+4.48]×105%×7 2.5%)+($81.15×105%×27.5%)=	76.54
Hospital Base Rate	121.82

HCFA Base Composit Rates

(Any discrepancies in the figures are due to rounding)

Independent Rate:	
Labor—	
($53.37×86.5%)+($15.03×13.5%)=	$48.19
Nonlabor—	
($65.28×86.5%)+($81.15×13.5%)=	67.42
Independent Base Rate	115.61
Hospital Rate:	
Labor—	
($53.37×105%×72.5%)+($15.03×105%×27.5%)=	$44.97
Nonlabor—	
([$65.28+4.48]×105%×7 2.5%)+($81.15×105%×27.5%)=	76.54
Hospital Base Rate	121.51

To lessen the effects of using a new wage index, we will phase-in the most recent HCFA wage index over five years. This will eliminate drastic decreases in composite payment rates for some Metropolitan Statistical Areas (MSAs) and rural areas. Based on the combination of the two payment rates, 46 percent of the ESRD facilities, payment rates decrease less than if only the HCFA wage index were applied. Thirteen percent of all ESRD facilities will experience no change in their rates because of this modification. The schedule for implementing the phase-in appears in section IV C of this notice.

A chart is provided in this notice of all payment rates for all facilities in every MSA and rural area (see section V of this notice), and, therefore, it is not necessary for any facility to compute its rate. However, in order to explain the method for calculating the composite rate, we are providing the following example of a calculation of the composite rate in the first year.

Example: Facility A is an independent dialysis facility located in Dayton, Ohio (MSA 2000).

1. Facility A's BLS wage index is 1.1240 and its HCFA wage index is 1.0939.
2. Multiply the BLS wage index by the BLS labor component: 1.1240×$48.20=$54.18.
3. Add the result of step 2 to the BLS nonlabor component: $54.18+$67.42=$121.60.
4. Multiply the result of step 3 by 0.8 (80 percent of the rate using the BLS wage index): $121.60×0.8=$97.28.
5. Multiply the HCFA wage index by the HCFA labor component: 1.0939×$48.19=$52.72.
6. Add the result of step 5 to the HCFA nonlabor component: $52.72+$67.42=$120.14.
7. Multiply the result of step 6 by 0.2 (20 percent of the rate using the HCFA wage index): $120.14×0.2 =$24.03.
8. Add the result of step 7 to the result of step 4: $24.03+$97.28=$121.31.

G. Payment Rates

Section V of this notice provides a listing of composite rates for urban and rural hospitals and independent facilities. While the list shows the actual wage index from the BLS and HCFA wage indexes, we applied the payment limits, that is, a minimum wage index of 0.9 and a maximum rate of $138.00, in calculating individual composite payment rates. The range in rates for independent facilities is from $110.80 to $138; for hospitals the range in rates is from $117.23 to $138. Wage indexes will be applied to these base rates, resulting in estimated average payment rates of $119.80 for independent facilities and $126.16 for hospital-based facilities.

There are some new MSA designations for the HCFA wage index that did not exist for the 1980 BLS wage index. To compute payment rates for these new MSAs, we used the county within the new MSA designation that had the highest 1980 BLS wage index.

V. Urban and Rural Wage Indexes and Payment Rates

We developed the HCFA gross hospital wage index from a special survey of acute care hospitals subject to the prospective payment system. The HCFA gross hospital wage index was

designed to correct the inability of the previous BLS measures to account for local differences in part-time hospital employment. Because the HCFA wage index more accurately measures local wage variations than the previous BLS wage index and because independent facilities are in competition with hospitals for the same dialysis personnel, we proposed in our May 13, 1986 notice to use the September 5, 1985 HCFA wage index to compute facilities' composite rates.

Since the publication of the May 13, 1986 notice, we have revised the HCFA gross hospital wage index. The newly revised index was published in the **Federal Register** on May 30, 1986 (51 FR 19738) as part of a final notice that announced a revised schedule of limits on home health agency costs. Technical corrections to the May 30, 1986 notice were published in the **Federal Register** on August 7, 1986 (51 FR 28439).

The HCFA wage index reflects the latest MSAs designated by the Executive Office of Management and Budget, including the changes that were announced on June 27, 1985 and were effective June 30, 1985. A discussion of the legislative background and development of the HCFA gross hospital wage index can be found in the preamble to the September 3, 1985 final rule (50 FR 35661).

We are reprinting the 1980 BLS wage index, the May 30, 1986 HCFA wage index, and the new ESRD payment rates for each MSA and rural area below.

PAYMENT RATES

[Year 1]

MSA code	Name of MSA	State	BLS index	PPS index	Hospital rate [1]	Independent rate [1]
0040	Abilene	TX	0.8360	0.9003	117.24	110.80
*0060	Aguadilla	PR	0.6806	0.5581	117.23	110.80
0080	Akron	OH	1.0997	1.1080	126.34	120.51
0120	Albany	GA	0.8712	0.8183	117.23	110.80
0160	Albany-Schenectady-Troy	NY	0.9645	0.9248	119.79	113.53
0200	Albuquerque	NM	1.0380	1.1078	124.10	118.12
0220	Alexandria	LA	0.9619	0.9169	119.63	113.35
0240	Allentown-Bethlehem	PA-NJ	1.0506	1.0454	124.00	118.01
0280	Altoona	PA	1.0463	1.0022	123.46	117.42
0320	Amarillo	TX	0.9449	0.9595	119.40	113.10
0360	Anaheim-Santa Ana	CA	1.2853	1.2616	134.45	129.14
0380	Anchorage	AK	1.5992	1.5849	138.00	138.00
0400	Anderson	IN	0.9850	0.9882	121.11	114.93
0405	Anderson	SC	0.8712	0.8369	117.23	110.80
0440	Ann Arbor	MI	1.2883	1.2607	134.54	129.25
0450	Anniston	AL	0.8882	0.8519	117.23	110.80
0460	Appleton-Oshkosh-Neenah	WI	0.9620	1.0666	120.98	114.80
0470	Arecibo	PR	0.6481	0.6081	117.23	110.80
0480	Asheville	NC	1.0033	0.8844	120.98	114.78
0500	Athens	GA	0.8811	0.8179	117.23	110.80
0520	Atlanta	GA	0.9418	0.9663	119.34	113.05
0560	Atlantic City	NJ	1.0417	1.0566	123.78	117.77
0600	Augusta	GA-SC	0.9462	0.9602	119.45	113.16
*0620	Aurora-Elgin	IL	1.2013	1.1015	129.96	124.36
0640	Austin	TX	1.0158	1.1177	123.39	117.36
0680	Bakersfield	CA	1.1813	1.2059	130.18	124.59
0720	Baltimore	MD	1.1352	1.1150	127.69	121.94
0733	Bangor	ME	0.9421	0.9285	119.02	112.70
0760	Baton Rouge	LA	0.9906	0.9825	121.26	115.09
0780	Battle Creek	MI	1.0366	1.0302	123.36	117.32
0840	Beaumont-Port Arthur	TX	0.9407	1.0082	119.68	113.41
*0845	Beaver County	PA	1.1494	1.0919	127.99	122.26
0860	Bellingham	WA	0.9181	1.1471	120.11	113.88
0870	Benton Harbor	MI	0.8639	0.8911	117.23	110.80
*0875	Bergen-Passaic	NJ	1.3979	1.0748	135.37	131.68
0880	Billings	MT	0.9762	1.0226	121.10	114.92
0920	Biloxi-Gulfport	MS	0.8379	0.8489	117.23	110.80
0960	Binghamton	NY	0.9463	0.9558	119.42	113.12
1000	Birmingham	AL	1.0023	0.9663	121.53	115.38
1010	Bismarck	ND	0.9430	0.9943	119.64	113.36
1020	Bloomington	IN	0.9160	0.9899	118.63	112.28
1040	Bloomington-Normal	IL	0.9168	0.9844	118.60	112.26
1080	Boise City	ID	1.0585	1.0584	124.40	118.44
1123	Boston-Salem-Brockton	MA	1.1387	1.1560	128.19	122.47
*1125	Boulder-Longmont	CO	1.1952	1.1326	130.02	124.42
1140	Bradenton	FL	0.9286	0.9196	118.45	112.09
*1145	Brazoria	TX	1.1222	0.8742	125.28	119.37
1150	Bremerton	WA	0.8993	0.9813	117.97	111.58
1163	Bridgeport-Norwalk-Danbury	CT	1.1904	1.1846	130.31	124.74
1240	Brownsville-Harlingen	TX	0.9764	0.8977	120.00	113.74
1260	Bryan-College Station	TX	0.8228	0.9569	117.75	111.35
1280	Buffalo	NY	0.9939	1.0687	122.15	116.05
1300	Burlington	NC	0.8785	0.7926	117.23	110.80

PAYMENT RATES—Continued

[Year 1]

MSA code	Name of MSA	State	BLS index	PPS index	Hospital rate [1]	Independent rate [1]
1303	Burlington	VT	0.9554	1.0131	120.26	114.02
1310	Caguas	PR	0.6007	0.6279	117.23	110.80
1320	Canton	OH	0.9637	1.0080	120.52	114.30
1350	Casper	WY	1.0632	1.1063	125.00	119.08
1360	Cedar Rapids	IA	0.9418	1.0174	119.80	113.54
1400	Champaign-Urbana-Rantoul	IL	1.0359	0.9965	123.03	116.97
1440	Charleston	SC	1.0333	0.8912	122.07	115.94
1480	Charleston	WVA	1.0869	1.0482	125.34	119.43
1520	Charlotte-Rock Hill	NC–SC	0.9767	0.8991	120.01	113.76
1540	Charlottesville	VA	1.0694	0.9345	123.68	117.67
1560	Chattanooga	TN–GA	0.9985	1.0041	121.74	115.60
*1580	Cheyenne	WY	0.9782	0.9702	120.70	114.49
1600	Chicago	IL	1.2013	1.2351	131.16	125.64
1620	Chico	CA	1.0813	1.2463	126.92	121.13
1640	Cincinnati	OH–KY–IN	1.0959	1.1050	126.17	120.33
1660	Clarks-Hopkinsville	TN–KY	0.8519	0.8183	117.23	110.80
1680	Cleveland	OH	1.2149	1.1565	130.95	125.41
1720	Colorado Springs	CO	1.0890	1.0439	125.38	119.47
1740	Columbia	MO	1.1961	1.1022	129.78	124.16
1760	Columbia	SC	0.9874	0.9168	120.55	114.33
1800	Columbus	GA–AL	0.9195	0.7929	117.94	111.55
1840	Columbus	OH	1.0803	0.9684	124.39	118.41
1880	Corpus Christi	TX	0.9762	0.9899	120.80	114.60
1900	Cumberland	MD–WVA	0.9221	0.8996	118.03	111.65
1920	Dallas	TX	1.0222	1.0733	123.23	117.18
1950	Danville	VA	0.8960	0.8087	117.23	110.80
1960	Davenport-Moline	IA–IL	0.9804	1.0660	121.64	115.50
2000	Dayton-Springfield	OH	1.1240	1.0939	127.09	121.31
2020	Daytona Beach	FL	0.8804	0.9139	117.36	110.93
2040	Decatur	IL	1.0023	0.9592	121.47	115.31
2080	Denver	CO	1.1952	1.2865	131.41	125.91
2120	Des Moines	IA	1.0597	1.0556	124.42	118.46
2160	Detroit	MI	1.2516	1.1725	132.42	126.98
*2180	Dothan	AL	0.8167	0.8457	117.23	110.80
2200	Dubuque	IA	0.9685	1.0590	121.14	114.97
2240	Duluth	MN–WI	0.9252	0.9930	118.98	112.66
2290	Eau Claire	WI	0.9102	0.9498	118.05	111.67
2320	El Paso	TX	0.8765	0.9437	117.63	111.22
2330	Elkhart-Goshen	IN	0.9160	0.9650	118.40	112.04
2335	Elmira	NY	1.0249	0.9741	122.43	116.33
2340	Enid	OK	0.9247	0.9626	118.69	112.35
2360	Erie	PA	0.9804	0.9991	121.04	114.86
2400	Eugene-Springfield	OR	0.9554	1.1163	121.19	115.02
2440	Evansville	IN–KY	1.0438	1.0217	123.54	117.52
2520	Fargo-Moorhead	ND–MN	1.0057	1.0644	122.55	116.45
2560	Fayetteville	NC	0.8155	0.8330	117.23	110.80
2580	Fayetteville-Springdale	AR	0.8747	0.8078	117.23	110.80
2640	Flint	MI	1.1849	1.2104	130.35	124.77
2650	Florence	AL	0.8223	0.7889	117.23	110.80
2655	Florence	SC	0.8445	0.7686	117.23	110.80
2670	Fort Collings-Loveland	CO	0.9121	1.0846	119.33	113.04
2680	Ft. Lauderdale-Pompano Beach	FL	1.0830	1.1249	125.89	120.02
2700	Fort Myers-Cape Coral	FL	0.9389	0.9533	119.12	112.81
*2710	Fort Pierce	FL	0.9059	1.0215	118.54	112.19
2720	Fort Smith	AK–OK	0.9318	0.9243	118.61	112.26
2750	Fort Walton Beach	FL	0.7921	0.8751	117.23	110.80
2760	Fort Wayne	IN	0.9222	0.9568	118.55	112.20
*2800	Fort Worth-Arlington	TX	1.0222	0.9998	122.56	116.47
2840	Fresno	CA	1.2345	1.1490	131.59	126.09
2880	Gadsden	AL	0.9316	0.8777	118.38	112.01
2900	Gainesville	FL	0.9496	0.9642	119.61	113.33
2920	Galveston-Texas City	TX	1.0940	1.1412	126.44	120.60
2960	Gary-Hammond	IN	1.1438	1.0978	127.85	122.10
2975	Glens Falls	NY	0.9078	0.9607	118.07	111.69
2985	Grand Forks	ND	0.8120	0.9871	118.02	111.64
3000	Grand Rapids	MI	0.9905	1.0663	122.01	115.89
3040	Great Falls	MT	0.9406	1.0722	120.26	114.03
3060	Greeley	CO	1.0158	1.0763	123.02	116.96
3080	Green Bay	WI	1.0100	1.0326	122.41	116.32

PAYMENT RATES—Continued

[Year 1]

MSA code	Name of MSA	State	BLS index	PPS index	Hospital rate [1]	Independent rate [1]
3120	Greensboro-Salem-High Pt	NC	0.9463	0.9388	119.26	112.96
3160	Greenville-Spartanburg	SC	0.9802	0.9130	120.26	114.02
3180	Hagerstown	MD	1.0411	0.9585	122.87	116.80
3200	Hamilton-Middletown	OH	1.0706	1.0214	124.51	118.54
3240	Harrisburg-Carlisle	PA	1.0608	0.9868	123.84	117.83
3283	Hartford-Britain-Briston	CT	1.1760	1.1486	129.47	123.83
3290	Hickory	NC	0.8509	0.8982	117.23	110.80
3320	Honolulu	HI	1.1867	1.2022	130.34	124.77
*3350	Houma-Thibodaux	LA	0.9000	0.9229	117.44	111.02
3360	Houston	TX	1.1222	1.0668	126.78	120.97
3400	Huntington-Ashland	WVA-KY-OH	0.9534	0.9509	119.63	113.34
3440	Huntsville	AL	0.8827	0.8661	117.23	110.80
3480	Indianapolis	IN	1.0551	1.0594	124.28	118.32
3500	Iowa City	IA	1.1812	1.3084	131.09	125.57
3520	Jackson	MI	1.0561	1.0206	123.98	117.98
3560	Jackson	MS	0.9192	0.9354	118.25	111.88
*3580	Jackson	TN	0.7987	0.7916	117.23	110.80
3600	Jacksonville	FL	0.9777	0.9481	120.48	114.26
3605	Jacksonville	NC	0.9059	0.7966	117.45	111.02
3620	Janesville-Beloit	WI	0.8912	0.9422	117.61	111.20
3640	Jersey City	NJ	1.1350	1.1108	127.64	121.89
*3660	Johnson City-Bristol	TN-VA	0.9000	0.8617	117.23	110.80
3680	Johnstown	PA	1.0642	0.9526	123.66	117.63
*3690	Joliet	IL	1.2013	1.1253	130.17	124.59
*3710	Joplin	MO	0.9000	0.9202	117.42	110.99
3720	Kalamazoo	MI	1.2181	1.2341	131.77	126.28
3740	Kankakee	IL	0.9784	0.9510	120.53	114.31
3760	Kansas City	MO-KS	0.9840	1.0660	121.78	115.64
3800	Kenosha	WI	1.1136	1.0875	126.66	120.85
3810	Killeen-Temple	TX	0.9185	0.8849	117.91	111.51
3840	Knoxville	TN	0.9087	0.8996	117.55	111.13
3850	Kokomo	IN	1.0083	0.9870	121.95	115.81
3870	La Crosse	WI	0.9406	1.0167	119.76	113.49
3880	Lafayette	LA	1.0077	1.0114	122.14	116.02
3920	Lafayette	IN	0.9257	0.9163	118.32	111.95
3960	Lake Charles	LA	0.9204	1.0036	118.91	112.58
*3965	Lake County	IL	1.2013	1.1637	130.52	124.96
3980	Lakeland-Winter Haven	FL	0.8993	0.8851	117.23	110.80
4000	Lancaster	PA	1.0762	1.0396	124.87	118.94
4040	Lansing-East Lansing	MI	1.0718	1.0769	125.05	119.13
4080	Laredo	TX	0.8631	0.8163	117.23	110.80
4100	Las Cruces	NM	0.7737	0.8767	117.23	110.80
4120	Las Vegas	NV	1.2134	1.1254	130.61	125.06
4150	Lawrence	KS	0.9678	1.0180	120.75	114.55
4200	Lawton	OK	0.9619	0.9469	119.90	113.63
4243	Lewiston-Auburn	ME	0.8879	0.9426	117.62	111.21
4280	Lexington-Fayette	KY	0.9328	0.9873	119.21	112.90
4320	Lima	OH	1.0392	0.9866	123.05	117.00
4360	Lincoln	NE	0.9347	0.9710	119.13	112.82
4400	Little Rock-N Little Rock	AR	1.0469	1.1135	124.47	118.52
4420	Longview-Marshall	TX	0.8757	0.8410	117.23	110.80
4440	Lorain-Elyria	OH	1.0438	1.0280	123.59	117.58
4480	Los Angeles-Long Beach	CA	1.3174	1.3290	136.21	131.03
4520	Louisville	KY-IN	1.0632	1.0081	124.12	118.14
4600	Lubbock	TX	0.9036	1,0128	118.39	112.02
4640	Lynchburg	VA	0.8747	0.9215	117.43	111.01
4680	Macon-Warner Robins	GA	0.9431	0.9325	119.09	112.78
4720	Madison	WI	1.0454	1.0902	124.22	118.24
4763	Manchester-Nashua	NH	0.9762	0.9724	120.65	114.43
4800	Mansfield	OH	0.9359	0.9919	119.37	113.07
4840	Mayaguez	PR	0.5902	0.5732	117.23	110.80
4880	McAllen-Edinburg-Mission	TX	0.8269	0.8105	117.23	110.80
4890	Medford	OR	0.9967	1.0356	121.96	115.83
4900	Melborune-Palm Bay	FL	0.9652	0.9378	119.93	113.67
4920	Memphis	TN-AR-MS	1.0594	1.0494	124.35	118.38
*4940	Merced	CA	1.0662	1.2134	126.08	120.23
5000	Miami-Hialeah	FL	1.1623	1.0703	128.27	122.55
*5015	Middlesex-Hunterdon	NJ	1.0618	1.0349	124.31	118.34
5040	Midland	TX	1.0057	1.1305	123.14	117.09

PAYMENT RATES—Continued

[Year 1]

MSA code	Name of MSA	State	BLS index	PPS index	Hospital rate [1]	Independent rate [1]
5080	Milwaukee	WI	1.0561	1.1411	125.06	119.14
5120	Minneapolis-St Paul	MN-WI	1.0099	1.1772	123.71	117.71
5160	Mobile	AL	0.9490	0.8927	119.01	112.69
5170	Modesto	CA	1.0548	1.2103	125.63	119.76
*5190	Monmouth-Ocean	NJ	1.0278	0.9924	122.70	116.62
5200	Monroe	LA	0.9324	0.9343	118.72	112.38
5240	Montgomery	AL	0.9885	0.8876	120.44	114.21
5280	Muncie	IN	0.9595	1.0065	120.35	114.12
5320	Muskegon	MI	0.9808	0.9912	120.98	114.79
*5345	Naples	FL	0.9059	1.0448	118.75	112.42
5360	Nashville	TN	1.0498	0.9414	123.03	116.97
5380	Massau-Suffolk	NY	1.2886	1.3399	135.27	130.02
5403	New Bedford-Fall River-Attelbo	MA	0.9922	0.9795	121.29	115.12
5483	New Haven-Waterbury-Meriden	CT	1.0904	1.1276	126.18	120.34
5523	New London-Norwich	CT	1.0930	1.1103	126.12	120.27
5560	New Orleans	LA	0.9842	0.9344	120.59	114.38
5600	New York	NY	1.3979	1.3809	138.00	134.63
5640	Newark	NJ	1.2061	1.1404	130.48	124.92
*5700	Niagara Falls	NY	0.9939	0.8963	120.63	114.42
5720	Norfolk-Newport News	VA	0.9259	0.9692	118.79	112.47
5775	Oakland	CA	1.3337	1.4893	137.14	132.96
5790	Ocala	FL	0.9418	0.8735	118.75	112.41
5800	Odessa	TX	0.9296	0.9619	118.86	112.54
5880	Oklahoma City	OK	1.0161	1.0930	123.18	117.14
5910	Olympia	WA	1.0540	1.0787	124.43	115.83
5920	Omaha	NE-IA	0.9859	1.0509	121.70	115.67
*5950	Orange County	NY	1.0483	0.9299	122.88	116.81
5960	Orlando	FL	0.9890	1.0188	121.53	115.38
5990	Owensboro	KY	0.8803	0.8243	117.23	110.80
6000	Oxnard-Ventura	CA	1.4050	1.2851	137.27	133.98
6015	Panama City	FL	0.8865	0.8354	117.23	110.80
6020	Parkersburg-Marietta	WVA-OH	1.0064	0.9121	121.20	115.02
6025	Pascagoula	MS	1.1283	0.9678	126.12	120.25
6080	Pensacola	FL	0.9236	0.8742	118.09	111.71
6120	Peoria	IL	1.1136	1.0584	126.40	120.56
6160	Philadelphia	PA-NJ	1.1941	1.1783	130.39	124.82
6200	Phoenix	AZ	1.1383	1.0801	127.49	121.73
6240	Pine Bluff	AR	0.7832	0.8009	117.23	110.80
6280	Pittsburgh	PA	1.1494	1.1011	128.08	122.35
6323	Pittsfield	MA	1.0335	1.0246	123.20	117.14
6360	Ponce	PR	0.7832	0.6935	117.23	110.80
6403	Portland	ME	1.0113	1.0114	122.27	116.16
6440	Portland	OR	1.1208	1.2074	128.00	122.27
*6453	Portsmouth-Dover-Rochester	NH-ME	0.8549	0.9373	117.57	111.16
6460	Poughkeepsie	NY	1.1148	1.0052	125.96	120.09
6483	Providence-Pawtucket-Woonsocket	RI	1.0384	1.0553	123.65	117.63
6520	Provo-Orem	UT	0.9408	0.9858	119.49	113.20
6560	Pueblo	CO	1.0859	1.1210	125.96	120.10
6600	Racine	WI	0.8987	1.0002	118.14	111.76
6640	Raleigh-Durham	NC	1.0364	0.9720	122.83	116.75
*6660	Rapid City	SD	0.7733	0.9623	117.79	111.40
6680	Reading	PA	1.0092	1.0248	122.32	116.21
6690	Redding	CA	1.0671	1.2396	126.34	120.51
6720	Reno	NV	1.3337	1.1839	135.50	130.25
6740	Richland-Kennewick	WA	0.9678	1.0256	120.82	114.62
6760	Richmond-Petersburg	VA	0.9379	0.9564	119.12	112.81
6780	Riverside-San Bernardino	CA	1.2201	1.2517	132.00	126.53
6800	Roanoke	VA	0.9948	0.8997	120.67	114.45
6820	Rochester	MN	1.0438	1.0284	123.60	117.58
6840	Rochester	NY	1.0571	1.0226	124.03	118.04
6880	Rockford	IL	1.0550	1.1354	124.97	119.04
6920	Sacramento	CA	1.2130	1.2969	132.14	126.70
6960	Saginaw-Bay City-Midland	MI	1.1289	1.1070	127.39	121.62
6980	St Cloud	MN	0.8638	1.0018	118.15	111.78
7000	St Joseph	MO	1.0264	0.9487	122.26	116.14
7040	St Louis	MO-IL	1.0367	1.0827	123.83	117.83
7080	Salem	OR	1.0834	1.0971	125.66	119.77
7120	Salinas-Seaside-Monterey	CA	1.2317	1.2571	132.46	127.03
7160	Salt Lake City-Ogden	UT	0.9370	1.0354	119.80	113.53

PAYMENT RATES—Continued

[Year 1]

MSA code	Name of MSA	State	BLS index	PPS index	Hospital rate [1]	Independent rate [1]
7200	San Angelo	TX	0.8521	0.8719	117.23	110.80
7240	San Antonio	TX	0.9595	0.8943	119.39	113.09
7320	San Diego	CA	1.2334	1.3104	133.01	127.61
7360	San Francisco	CA	1.3337	1.6517	137.14	132.96
7400	San Jose	CA	1.3264	1.4805	136.88	132.68
7440	San Juan	PR	0.6806	0.6197	117.23	110.80
7480	Santa Barbara-Lompoc	CA	1.1107	1.1822	127.40	121.65
7485	Santa Cruz	CA	1.1223	1.2432	128.38	122.67
*7490	Santa Fe	NM	0.9235	0.9809	118.82	112.48
7500	Santa Rosa-Petaluma	CA	1.4336	1.3112	137.50	135.34
7510	Sarasota	FL	1.0096	0.9639	121.78	115.64
7520	Savannah	GA	0.9740	0.8917	119.91	113.65
*7560	Scranton-Wilkes Barre	PA	1.0447	0.9982	123.36	117.32
7600	Seattle	WA	1.0487	1.1579	124.95	119.02
7610	Sharon	PA	1.0046	0.9757	121.71	115.56
7620	Sheboygan	WI	0.8920	0.9885	118.03	111.65
7640	Sherman-Denison	TX	0.8879	0.8619	117.23	110.80
7680	Sherveport	LA	1.0540	0.9613	123.37	117.33
7720	Sioux City	IA-NE	0.9975	1.0062	121.73	115.58
7760	Sioux Falls	SD	0.9242	1.0211	119.20	112.90
7800	South Bend-Mishawaka	IN	0.9157	1.0087	118.78	112.45
7840	Spokane	WA	1.1020	1.1559	126.86	121.06
7880	Springfield	IL	1.1235	1.0664	126.83	121.02
7920	Springfield	MO	0.9079	0.9863	118.30	111.93
8003	Springfield	MA	1.0298	1.0060	122.89	116.83
8050	State College	PA	1.1383	1.0772	127.46	121.70
8080	Steubenville-Weirton	OH-WVA	0.9905	0.9655	121.10	114.92
8120	Stockton	CA	1.3466	1.2871	136.89	131.75
8160	Syracuse	NY	1.5182	1.0301	134.97	133.81
8200	Tacoma	WA	1.0720	1.1052	125.31	119.41
8240	Tallahasse	FL	0.9462	0.9509	119.36	113.07
8280	Tampa-Clearwater	FL	1.0066	0.9830	121.85	115.71
8320	Terre Haute	IN	0.8856	0.8456	117.23	110.80
8360	Texarkana	TX-AR	1.1761	0.8650	127.23	121.45
8400	Toledo	OH	1.1421	1.2267	128.94	123.28
8440	Topeka	KS	1.0783	1.0632	125.17	119.24
8480	Trenton	NJ	1.0906	1.0317	125.32	119.42
8520	Tucson	AZ	1.0495	1.0090	123.63	117.62
8560	Tulsa	OK	1.0220	1.0131	122.68	116.59
8600	Tuscaloosa	AL	1.0384	1.0172	123.30	117.26
8640	Tyler	TX	0.9893	1.0035	121.41	115.24
8680	Utica-Rome	NY	0.9977	0.8840	120.78	114.57
8720	Vallejo-Fairfield-NAPA	CA	1.6758	1.3397	137.76	136.80
*8725	Vancouver	WA	1.1208	1.1659	127.63	121.87
8750	Victoria	TX	0.8608	0.8205	117.23	110.80
8760	Vienland-Millville-Bridgeton	NJ	1.0070	0.9929	121.95	115.82
8780	Visalia-Porterville	CA	1.4467	1.0643	135.28	133.46
8800	Waco	TX	0.8347	0.9117	117.34	110.91
8840	Washington	DC-MD-VA	1.1908	1.1965	130.44	124.87
8920	Waterloo-Cedar Falls	IA	0.8884	0.9993	118.13	111.76
8940	Wausau	WI	0.9566	0.9871	120.07	113.82
8960	West Palm & Delray Beach	FL	0.9821	0.9972	121.08	114.90
9000	Wheeling	WVA-OH	0.9953	0.9771	121.38	115.21
9040	Wichita	KS	1.0412	1.1589	124.68	118.74
9080	Wichita Falls	TX	0.8576	0.8776	117.23	110.80
9140	Williamsport	PA	0.9890	0.9048	120.50	114.28
9160	Wilmington	DE-NJ-MD	1.1092	1.0588	126.24	120.39
9200	Wilmington	NC	0.9005	0.9591	117.78	111.38
9243	Worcester-Leominster	MA	0.9943	1.0094	121.63	115.49
9260	Yakima	WA	0.9682	1.0389	120.96	114.77
9280	York	PA	1.0110	0.9853	122.03	115.90
9320	Youngstown-Warren	OH	1.1351	1.0480	127.09	121.29
9340	Yuba City	CA	1.1283	1.0460	126.82	121.01

[1] Rates are adjusted for payment limits of .90 and $138.00.
[2] An "*" denotes those MSA's that did not exist in 1980. To compute rates for these areas, we used the county within the new MSA that had the highest 1980 BLS wage index.

RURAL HOSPITAL AND INDEPENDENT PAYMENT RATES

[Year 1]

Non-MSA areas	BLS index	PPS index	Hospital rate[1]	Independent rate[1]
Alabama	0.8167	0.7466	117.23	110.80
Alaska	1.4136	1.4989	138.00	136.05
Arizona	.9160	.9323	118.11	111.73
Arkansas	.7921	.7703	117.23	110.80
California	1.0662	1.1385	125.40	119.50
Colorado	.8515	.9326	117.53	111.11
Connecticut	1.0658	1.0880	124.93	119.00
Delaware	.9406	.8645	118.71	112.37
Florida	.9059	.8815	117.45	111.02
Georgia	.8586	.7779	117.23	110.80
Hawaii	1.2652	1.0157	131.51	125.99
Idaho	.8991	.9130	117.35	110.92
Illinois	.8965	.8917	117.23	110.80
Indiana	.8826	.8685	117.23	110.80
Iowa	.8290	.8719	117.23	110.80
Kansas	.8205	.8481	117.23	110.80
Kentucky	.8506	.8036	117.23	110.80
Louisiana	.8515	.8605	117.23	110.80
Maine	.8960	.8701	117.23	110.80
Maryland	.9928	.8773	120.59	114.37
Massachusetts	1.0870	1.0548	125.40	119.50
Michigan	1.0471	.9589	123.09	117.04
Minnesota	.8264	.8788	117.23	110.80
Mississippi	.8118	.7705	117.23	110.80
Missouri	.8479	.8325	117.23	110.80
Montana	.8803	.9154	117.37	110.95
Nebraska	.7245	.8310	117.23	110.80
Nevada	.9741	1.0799	121.54	115.39
New Hampshire	1.0452	.9234	122.71	116.62
New Mexico	.9235	.9213	118.28	111.91
New York	.9070	.8730	117.49	111.07
North Carolina	.8810	.8130	117.23	110.80
North Dakota	.8203	.9061	117.29	110.86
Ohio	9305	.9100	118.43	112.07
Oklahoma	.8525	.8462	117.23	110.80
Oregon	.9566	1.0782	120.89	114.70
Pennsylvania	1.0428	.9427	122.79	116.71
Puerto Rico	.6438	.5736	117.23	110.80
Rhode Island	.9762	.9553	120.49	114.27
South Carolina	.8184	.7827	117.23	110.80
Soth Dakota	.7733	.8263	117.23	110.80
Tennessee	.7987	.7733	117.23	110.80
Texas	.8149	.8180	117.23	110.80
Utah	.8006	.9505	117.69	111.28
Vermont	.8808	.8888	117.23	110.80
Virginia	.8484	.8194	117.23	110.80
Washington	.9453	1.0273	120.02	113.77
West Virginia	.9296	.8816	118.31	111.94
Wisconsin	.8291	. 8995	117.23	110.80
Wyoming	.9782	.9745	120.74	114.53

[1] Rates are adjusted for payment limits of 0.90 and $138.

VI. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to publish a regulatory impact analysis for regulations and other documents that are likely to meet the criteria for a major rule. A major rule is one that would result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies, or any geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In the proposed notice published May 13, 1986, we estimated that changing the ratesetting methodology and revising composite rates would reduce payments for outpatient maintenance dialysis services by approximately $115 million in the first full fiscal year of implementation. Therefore, the notice was treated as a major rule under E.O. 12291, and an initial regulatory impact analysis was prepared.

In addition, we prepare and publish a regulatory flexibility analysis consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) for notices unless the Secretary certifies that the notices would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all ESRD facilities to be small entities, and we provided an initial regulatory flexibility analysis in the proposed notice of the effect on those facilities. Although the rates set through this final notice will not result in the same level of reduction as the proposed notice, they will have a substantial impact on all ESRD facilities and we consider this notice a major rule. Therefore, the discussion below, in combination with the other sections of this notice, constitutes a combined final regulatory impact analysis and final regulatory flexibility analysis consistent with E.O. 12291 and the RFA.

B. Affected Entities

There are 1,380 ESRD facilities throughout the country providing outpatient maintenance dialysis services. The number of 1984 outpatient treatments, exclusive of home treatments, provided by these facilities follows:

Setting	Hospital-based	Independent
Urban	2,947,172	4,670,497
Rural	278,108	559,110
Subtotal	3,225,280	5,229,607
Total (hospital-based/independent)		8,454,887

Currently, we have identified approximately 451 facilities belonging to approximately 56 chain organizations. The range of facilities per chain is from two facilities to 190.

These facilities are largely dependent on Federal government payments for their existence. Over 90 percent of all outpatient maintenance dialysis patients are Medicare beneficiaries. The Medicare program pays 80 percent of the composite payment rate for outpatient dialysis for these patients. Additional Federal money is infused into the ESRD industry through the State Medicaid programs. Most of the State

Medicaid programs pay the remaining 20 percent of the facility cost or charge not paid by Medicare for those patients who are Medicaid recipients.

C. Effects of These Revised Rates

When we published proposed and final regulations establishing the ESRD composite rate payment system, we stated that we expected the system to accomplish two major objectives which, though not without effects that may seem adverse to some parties, would be of sufficient benefit to offset greatly any costs that resulted. These objectives are (1) to encourage home dialysis to the greatest extent feasible for the ESRD patient population, and (2) to encourage economy and efficiency in furnishing dialysis services. These objectives are closely related, since we expect increasing home dialysis to contribute to cost reduction because it is a less expensive way to deliver treatment. As we stated in the May 11, 1983 final rule, facilities must comply with the health and safety requirements of 42 CFR Subpart U, and we expect those requirements to continue to prove satisfactory to ensure the quality of patient care. We also stated our expectation that tightening the rate of payment and increasing the incentives for efficiency would result in pressures on the ESRD manufacturers and suppliers of equipment and supplies to ESRD facilities to lower their prices as ESRD facilities economized and sought to lower their cost.

Some commenters on the proposed rule expressed concern that facility closures would leave them effectively unable to choose infacility dialysis because of increased travel time to the nearest facility. The continuing increase in the number of facilities, even since the announcement of our proposed composite rates in November 1981, but particularly since the final rules took effect on August 1, 1983, confirms our belief that facilities are able to operate under the composite rate system. The following chart shows recent growth in the number of facilities.

NUMBERS OF OUTPATIENT ESRD FACILITIES

Calendar year	Hospital dialysis providers	Independent dialysis providers	Total providers
December 1978	623	275	898
December 1979	630	329	959
December 1980	636	405	1,041
December 1981	657	486	1,143
December 1982	642	528	1,170
December 1983	620	627	1,247
December 1984	622	668	1,290
December 1985	632	748	1,380

The great fears expressed by some facilities, physicians and patients in response to the initial proposal of the composite rate system have not materialized. In addition, the proportion of patients receiving dialysis at home has increased. Thus, our experience to date supports our earlier expectations.

We believe that setting revised rates on the basis of the most recent available audit data, a slightly revised methodology, and a phase-in of the current HCFA wage index is the best way to continue to pursue those objectives at this time. These changes will have a significant effect on annual payments for routine dialysis, as demonstrated by the following:

ESTIMATED REDUCTIONS IN MEDICARE PAYMENTS TO OUTPATIENT ESRD FACILITIES

[In millions][1]

Fiscal year	Reduction in coinsurance	Medicare savings	Total reduction in payments
1987	15	60	75
1988	15	65	80
1989	15	65	80
1990	15	70	85
1991	15	75	90

[1] Due to rounding, addition may appear inexact. These estimates are rounded to the nearest $5 million, and are based on an assumed effective date of October 1, 1986.

In addition, because most State Medicaid programs pay coinsurance for ESRD beneficiaries who meet their eligibility requirements, some Medicaid savings will result from this change.

We expect these reduced revenues will intensify the incentives for ESRD facilities to improve their economy and efficiency and to shift as many patients to home dialysis as is safe and supportable. Our audits demonstrate that quality services are being furnished at a cost below the rates at efficient and economical facilities. Hence, despite the estimated reductions in Medicare payments, we believe that quality of care will not be reduced. Further, if a facility demonstrates with convincing evidence that it will have an allowable cost per treatment higher than its prospective rate, and if these excess costs meet the criteria in 42 CFR 405.439(g), a facility may receive an exception to that rate. The exception process provides greater accuracy of payments in unique situations in which additional costs can be justified.

D. Effect of New Wage Index and Adjustments to Rate Calculation

To facilitate an orderly transition to the new HCFA wage index, we are providing a five year phase-in of the HCFA wage index. As a result of the phase-in of the wage index, the inclusion of four small facilities' costs in the audited data base and the use of the most recent data for CAPD costs (see section IV of this notice), the average reduction in payment rates for hospital-based ESRD facilities is $4.43 and for independent facilities is $6.79 in the first year. The comparable reductions that would have resulted from the May 13, 1986 proposed notice were $8.49 and $8.65, respectively in the first year. The range in first-year rate reductions for ESRD facilities based on a comparison of this final notice and the May 13, 1986 proposed notice is as follows:

RANGE OF RATE REDUCTIONS

	Hospitals	Independents
May 13, 1986, proposed rates.	$0 to $19.75.	$2.45 to $23.10.
Revised final rates	$0 to $ 6.65.	$0 to $10.30.

NOTE: Negative amounts indicate an increase in payment.

Based on the revised final rates the range of per treatment payments for the first year follow:

RANGE OF PER TREATMENT PAYMENTS

Setting	Hospital-based	Independent
Urban	$117.24 to $138.	$110.80 to $138.
Rural	$117.24 to $131.51.	$110.80 to $136.04.

As a result of the changes we have made in this final notice, the average rate reduction for hospitals will be $4.43 with a majority of hospital-based facilities' experiencing a rate reduction of less than $5 per treatment. The average rate reduction for independent facilities will be $6.79 with almost 90 percent of all independent facilities experiencing a rate reduction of less than $8 per treatment.

The revised notice announces our policy to assist small, rural ESRD facilities that are not able to benefit from economies of scale in their operations by providing priority processing of exception requests for isolated essential facilities.

Additional discussion of the effects of the new wage index and the adjustments to the rates calculation appear in section IV of this notice.

E. Conclusion

We believe that the benefits of this notice will outweigh the costs. Payments will more accurately reflect facilities experiences and result in a substantial cost savings to the Medicare program. Medicare beneficiaries will benefit from reduced coinsurance obligations. The revised rates will strengthen economic incentives, promote efficiencies, and encourage additional appropriate dialysis in the home setting. Although the change in the ratesetting

methodology will result in a payment reduction, the reduction based on the most recent available data is reasonable and within our authority.

The proportion of patients receiving dialysis at home has increased, particularly for independent facilities. The cost of home dialysis has remained constant. We expect these trends to continue. The fears expressed by some facilities, physicians and patients in response to the initial proposal of the composite rate system have not materialized as the number of ESRD facilities has continued to increase. We will continue to monitor the effects of composite rate reimbursement on beneficiaries' access to care and continued development of the ESRD industry.

VII. Collection of Information Requirements

These changes will not impose information collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(Secs. 1102, 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: August 12, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: August 12, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-18478 Filed 8-14-86; 8:45 am]

BILLING CODE 4120-01-M

federal register

Friday
August 15, 1986

Part VII

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Proposed Actions Under Guidelines

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Proposed Actions under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on September 29, 1986. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue decisions on these proposals in accord with the Guidelines.

DATE: Comments received by September 19, 1986, will be reproduced and distributed to the RAC for consideration at its September 29, 1986 meeting.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 3B10, National Institutes of Health, Bethesda, Maryland 20892. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6051.

SUPPLEMENTARY INFORMATION: The **Federal Register** of June 25, 1986 (51 FR 23210), contained notice of the September 29, 1986, meeting of the RAC and one proposed modification of the NIH Guidelines for Research Involving Recombinant DNA Molecules. In addition, the following additional proposed modifications of the NIH Guidelines will be considered.

I. Proposed Amendment of Section III-A-2

Dr. Susan Gottesman, National Cancer Institute, Bethesda, Maryland, has proposed the following changes in the NIH Guidelines.

Section III-A-2 would be amended to read as follows (words in italics represent changed wording):

"III-A-2. Deliberate release into the environment of any organism containing recombinant DNA, except:

"*a.* Certain plants as described in Appendix L.

"*b. Deletion derivatives not otherwise covered by these Guidelines.*

"*c. Organisms covered in exemption III-D-2.*"

Dr. Gottesman offers the following rationale for this proposal:

The NIH Guidelines for Recombinant DNA Research were orginally designed to safeguard the environment from "new" organisms, created by recombinant DNA research, which might cause disease or otherwise disrupt the ecology. Recombinant DNA as a technique was specifically cited because of its immense potential for creating a variety of "new" and therefore untested organisms. The original Guidelines wisely assumed we knew little about the potential properties of such organisms and therefore limited their use to the laboratory. As the Guidelines evolved, an important task was the exemption from review of certain classes of experiments which, while involving the use of recombinant DNA techniques, did not in fact create new and untested organisms. Thus rearrangements within a plasmid or viral genome were exempted (Guidelines, section III-D-2), and even those within a single prokaryotic host, including its resident plasmids or viruses, were considered to be likely to occur at some frequency in nature and therefore not to require special review (Guidelines, section III-D-3). A similar principle has recently been proposed by the Biotechnology Science Coordinating Committee, in defining "new" organisms, for the purpose of regulatory oversight, as those resulting from combinations between different genera.[1] Deletions and rearrangements of single DNA sources, in particular, occur in nature. If similar rearrangements or deletions are created by recombinant DNA techniques, it seems reasonable to treat such molecules as we would treat those which are isolated as a result of classical genetic manipulations. Therefore, I propose that organisms in which the only use of recombinant DNA has been to remove or rearrange genetic information within a genome should not be subject to special scrutiny. Such experiments are already exempt from NIH Guidelines requirements for laboratory experimentation. This proposal would extend that exemption to experiments involving release of such organisms into the environment.

[1] Coordinated Framework for Regulation of Biotechnology; Announcement of Policy and Notice for Public Comment. Federal Register, June 26, 1986, p. 23302-23393.

II. Proposal To Add Bacillus Sphaericus To Appendix C-V

Dr. William F. Burke, Jr., of Arizona State University, Tempe, Arizona, has requested that *Bacillus sphaericus* be added to the list of Gram positive bacteria in Appendix C-V.

Dr. Burke has supplied information supporting this request to the Office of Recombinant DNA Activities.

Dated: August 12, 1986.

Bernard Talbot,

Acting Director, National Institute of Allergy and Infectious Diseases.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

[FR Doc. 86-18481 Filed 8-14-86; 8:45 am]

BILLING CODE 4140-01-M

federal register

Friday
August 15, 1986

Part VIII

Environmental Protection Agency

40 CFR Part 135

Notice Requirements for Citizen Suits Under the Safe Drinking Water Act; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 135

[FRL 3008-5]

Notice Requirements for Citizen Suits Under the Safe Drinking Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Safe Drinking Water Act (SDWA) authorizes any person to sue an alleged violator of any requirement of the SDWA or its regulations or to sue the Administrator for failure to perform any non-discretionary duty. However, before filing the suit, persons must give sixty days notice to various parties. EPA is today proposing regulations governing the manner in which citizens must give notice of their intent to sue. The regulations are similar to those implementing the notice of citizen suit provisions of the Clean Water Act (CWA) and the Resource Conservation and Recovery Act (RCRA).

DATE: Comments on the proposed rule must be received by September 29, 1986.

ADDRESS: Send comments to: Judy Long, Comment Clerk, Office of Drinking Water, WH-550, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ellen Berick, Office of Drinking Water, WH-550, EPA, 401 M Street SW., Washington, DC 20460, (202) 382-5547.

SUPPLEMENTARY INFORMATION: The Safe Drinking Water Act (SDWA) (42 U.S.C. 300f, *et seq.*) authorizes persons to commence a civil action against any person who is alleged to be in violation of any requirement prescribed by or under the statute, or against the Administrator for failure to perform any act which is not discretionary. SDWA section 1449(a), 42 U.S.C. 300j-8(a). These "citizen suits" must be preceded by notice of the violation to the Administrator, to the alleged violator, and to the State in which the alleged violation occurred at least sixty days before the suit is filed. SDWA section 1449(b); 42 U.S.C. 300j-8(b). The SDWA directs the Administrator to promulgate regulations for this required notice. *Id.* EPA is proposing such regulations by today's action; they apply to both Public Water System and Underground Injection Control (UIC) provisions.

Prior notice of a citizen suit serves several purposes. In the case of notice involving violations of the Act, the prior notice provision is intended to allow EPA or the State time to respond to the allegations with enforcement or other action, as appropriate. It is also intended to help eliminate duplicative actions. The SDWA precludes a citizen suit against an alleged violator if "the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance . . ." SDWA section 1449 (b)(2); 42 U.S.C. 300j-8(b)(2). If the Agency or State is already prosecuting the alleged violator, the prior notice permits EPA or the State to inform potential litigants that an action has been brought. In the case of alleged failure to perform a non-discretionary duty, notice serves the purpose of allowing the Agency to avert litigation by performing the requested act, or by explaining why the act is discretionary or cannot be performed within the time allotted.

The citizen suit provision of the SDWA is similar to those in the Resource Conservation and Recovery Act (RCRA) and the Clean Water Act (CWA). Therefore, the proposed regulations are similar to those already promulgated for RCRA at 40 CFR Part 254 and for the CWA at 40 CFR Part 135.

The prior notice regulation is straightforward and self-explanatory, with one exception. Hazardous waste injection wells are jointly regulated under both the SDWA and RCRA. RCRA does not require a sixty-day waiting period after notice of an alleged violation of Subtitle C of RCRA respecting hazardous wastes. *See* RCRA section 7002(c); 42 U.S.C. 6972. The Agency believes that whether a waiting period is required for citizen suits based on the UIC regulations turns on whether the citizen suit invokes jurisdiction under RCA section 7002 or SDWA section 1449. The Agency believes that actions brought for alleged violations of Subtitle C of RCRA alleging jurisdiction under section 7002 are not subject to the waiting period, but that actions for alleged violations of the SDWA relying on section 1449 for jurisdiction must be preceded by the 60-day waiting period. If both statutes are invoked, the allegation of jurisdiction under the SDWA requires compliance with the SDWA 60-day waiting period. *See* RCRA section 1006; 42 U.S.C. 6905. EPA invites comment on this approach.

The Administrator has determined that this is a minor regulation under the terms of E.O. 12291 and does not require a regulatory impact analysis. This regulation has been reviewed by the Office of Management and Budget. No associated reporting or recordkeeping requirements compel Office of Management and Budget approval under the Paperwork Reduction Act. There are no significant impacts on small entities as defined under the Regulatory Flexibility Act.

List of Subjects in 40 CFR Part 135

Public participation, Drinking water, Litigation notices.

Dated: August 11, 1986.

Lee M. Thomas,

Administrator.

For these reasons, it is proposed that Part 135 of Title 40 of the *Code of Federal Regulations* be amended by adding a new subpart, as follows:

1. The authority citation for Part 135 is revised to read as follows:

Authority: Subpart A, issued under Sec. 505, Clean Water Act, 33 U.S.C. 1365. Subpart B, issued under Sec. 1449, Safe Drinking Water Act, 42 U.S.C. 300j-8.

2. Part 135 is amended by designating §§ 135.1 through 135.3 as Subpart A and by adding a subpart heading to read as follows:

PART 135—PRIOR NOTICE OF CITIZEN SUITS

Subpart A—Prior Notice Under the Clean Water Act

* * * * *

3. Part 135 is amended by adding a new Subpart B, consisting of §§ 135.10 through 135.13 to read as follows:

Subpart B—Prior Notice Under the Safe Drinking Water Act

Sec.

135.10 Purpose.
135.11 Service of notice.
135.12 Contents of notice.
135.13 Timing of notice.

Subpart B—Prior Under the Safe Drinking Water Act

§ 135.10 Purpose.

Section 1449 of the Safe Drinking Water (SDWA) authorizes any person to commence a civil action to enforce the SDWA against an alleged violator of any requirements prescribed by or under the SDWA, or against the Administrator for failure to perform any duty which is not discretionary under the Act. No such action may be commenced prior to sixty days after giving notice of the alleged violation to the Administrator, any alleged violator and to the State. The purpose of this subpart is to prescribe procedures for giving the notice required by section 1449(b).

§ 135.11 Service of notice.

(a) Notice of intent to file suit pursuant to section 1449(a)(1) of the

SDWA shall be served in the following manner upon an alleged violator of any requirement prescribed by or under the SDWA:

(1) If the alleged violator is an individual or corporation, service of notice shall be accomplished by certified mail addressed to, or by personal service upon, the owner or operator of the public water system or underground injection well alleged to be in violation. A copy of the notice shall be mailed to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred, and the Attorney General for the State in which the violation is alleged to have occurred. If the alleged violator is a corporation, a copy of the notice shall also be mailed to the registered agent (if any) of the corporation in the State in which the violation is alleged to have occurred.

(2) If the alleged violator is a State or local agency, service of notice shall be accomplished by certified mail addressed to, or by personal service upon, the head of the State or local agency. A copy of the notice shall be mailed to the Attorney General for the State in which the violation is alleged to have occurred, the Administrator of the Environmental Protection Agency, and the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred.

(3) If the alleged violator is a Federal agency, service of notice shall be accomplished by certified mail addressed to, or by personal service upon, the head of the Federal agency. A copy of the notice shall be mailed to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred, the Attorney General of the United States, and the Attorney General of the State in which the violation is alleged to have occurred.

(b) Service of notice of intent to file suit pursuant to section 1449(a)(2) shall be accomplished by registered mail, return receipt requested, addressed to, or by personal service upon, the Administrator of the Environmental Protection Agency, Washington, DC 20460. A copy of the notice shall be mailed to the Attorney General for the United States.

(c) Notice given in accordance with the provisions of this part shall be deemed to have been served on the date of service, if served personally. If service was accomplished by mail, the date of receipt will be considered to be the date noted on the return receipt card.

§ 135.12 Contents of notice.

(a) *Violation of SDWA or requirements pursuant to SDWA.* Notice regarding an alleged violation of any requirement prescribed by or under the SDWA shall include sufficient information to permit the recipient to identify the specific requirement alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of the violation, and the full name, address, and telephone number of the person giving the notice.

(b) *Failure to act.* Notice regarding an alleged failure of the Administrator to perform any act or duty under the SDWA which is not discretionary with the Administrator shall identify the provision of the SDWA which requires the act or creates the duty, and shall describe with reasonable specificity the action taken or not taken by the Administrator which is alleged to constitute a failure to perform such act or duty, and shall state the full name, address, and telephone number of the person giving notice.

(c) *Identification of counsel.* All notices shall include the name, address, and telephone number of the legal counsel, if any, representing the person giving notice.

§ 135.13 Timing of notice.

No action may be commenced under 1449 (a)(1) or (a)(2) prior to sixty days after the plaintiff has given notice to the appropriate parties.

[FR Doc. 86-18457 Filed 8-14-86; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
August 15, 1986

Part IX

Environmental Protection Agency

40 CFR Parts 260, 261, 262, 264, 265, 270, and 271

Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems; Final Rule; Correction

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 270, and 271

[SWH-FRL-3066-1]

Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This document corrects typographical and other errors in a final rule for hazardous waste storage and treatment tank systems under the Resource Conservation and Recovery Act (RCRA) that appeared in the **Federal Register** of Monday, July 14, 1986, (51 FR 25422).

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, at (800) 424–9346 (toll free) or (202) 382–3000 in Washington, DC, or William J. Kline, Office of Solid Waste (WH–565), U.S. Environmental Protection Agency, Washington, DC, 20460, (202) 382–7917.

SUPPLEMENTARY INFORMATION: On July 14, 1986 (51 FR 25422), EPA issued a final rule that revised the standards for hazardous waste storage and treatment tank systems. Today, EPA is correcting several typographical and other errors contained in the July 14 final rule.

Dated: August 8, 1986.

J.W. McGraw,

Acting Assistant Administrator for Office of Solid Waste and Emergency Response.

The following corrections are made in the preamble for FRL 3023–9 (FR Doc. 15266), The Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems, published in the **Federal Register** on July 14, 1986, (51 FR 25422).

1. On page 25444, column 3, the second sentence of the first full paragraph, which reads "Concurrently, in today's **Federal Register**, EPA is proposing revised tank system standards that would apply to these generators," is corrected to read as follows: "In the future, EPA will propose revised tank system standards that would apply to these generators."

2. On page 25447, column 1, first paragraph, last line, "§§ 264.191 and 265.191" is corrected to read "§§ 264.192 and 265.192."

3. On page 25455, column 3, last paragraph, second line, §§ 264.196(b) and 265.196(b)" is corrected to read "§§ 264.196(e) and 265.196(e)."

4. On page 25456, column 2, first full paragraph, fifth line, "§§ 264.196(b) and 265.196(b)" is corrected to read "§§ 264.196(f) and 265.196(f)."

5. On page 25469, column 2, first full paragraph, fourth line, "June 16, 1985" is corrected to read "June 26, 1985."

The following corrections are made in the rules for FRL 3023–9, the Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank System, published in the **Federal Register** on July 14, 1986, (51 FR 25422).

§ 264.190 [Corrected]

1. On page 25472, column 3, § 264.190, paragraph (b), line 6, the reference to "§ 264 193" is corrected to read "§ 264.193."

§ 264.191 [Corrected]

2. On page 25473, column 1, § 264.191, the last sentence, "Approved by the Office of Management and Budget under control number 2050–0050.)" is corrected to read "(Information collection requirements contained in paragraphs (a) thru (d) were approved by the Office of Management and Budget under control number 2050–0050.)"

§ 264.192 [Corrected]

3. On page 25473, column 3, § 246.192, the word "component" in line 13 of paragraph (b) is corrected to read "components."

§ 264.193 [Corrected]

4. On page 25474, column 2, § 264.193, the word "and" at the end of line 5 of paragraph (a)(3) is removed.

5. On page 25474, column 3, § 264.193, line 4 of paragraph (e)(1)(iv) is corrected by inserting the words "the waste is" after the word "if."

6. On page 25475, column 1, § 264.193, the word "Joints" in line 3 of paragraph (e)(2)(iii) is corrected to read "joints."

7. On page 25475, column 2, § 264.193, the word "Joints" in line 1 of paragraph (f)(2) is corrected to read "joints."

8. On page 25476, column 2, § 264.193, paragraph (i)(1), the reference to "§ 264.191(a)" is corrected to read "§ 264.191(b)(5)."

9. On page 25476, column 2, § 264.193, paragraph (i)(2), lines 3 through 5 which read "operator must either (i) conduct a leak test as in paragraph (i)(1) or (ii) of this section develop a schedule and" are corrected to read as follows: "operator must either conduct a leak test as in paragraph (i)(1) of this section or develop a schedule and."

§ 264.196 [Corrected]

10. On page 25477, column 2, § 264.196, paragraph (d)(2) is corrected to read as follows:

(2) A leak or spill of hazardous waste is exempted from the requirements of this paragraph if it is:

(i) Less than or equal to a quantity of one (1) pound, and

(ii) Immediately contained and cleaned up.

11. On page 25477, column 2, § 264.196, paragraph (d)(3)(iv), the word "population" is corrected to read "populated."

12. On page 25478, column 1, § 264.196, line 4, the reference to "sections 3004(w)" is corrected to read "sections 3004(u)."

§ 265.192 [Corrected]

13. On page 25478, column 1, § 264.197, paragraph (c), line 5 is corrected by removing the words "is not exempt" and inserting in their place, the words "has not been granted a variance."

§ 264.192 [Corrected]

14. On page 25480, column 1, § 265.192, paragraph (a)(3)(i)(G) is corrected to read as follows: "(G) Stray electric current; and ,".

15. On page 25480, column 1, § 265.192, paragraph (a)(3)(ii)(A), line 3 is corrected by deleting the term "etc."

16. On page 25480, column 1, § 265.192, paragraph (a)(3)(ii)(B) line 2 is corrected by removing the term "etc."

17. On page 25480, column 1, § 265.192, paragraph (a)(3)(ii)(C), line 2 is corrected to read "insulating joints and flanges."

§ 265.193 [Corrected]

18. On page 25480, column 3, § 265.193, paragraph (a)(4), line 4 is corrected by removing the word "age" that appears after the word "facility."

19. On page 25481, column 2, § 265.193, paragraph (e)(2)(ii), line 5 is corrected by inserting the words "excess capacity" after the word "sufficient."

20. On page 25481, column 3, § 265.193, paragraph (g), line 6 is corrected by removing the number "(1)," lower-casing "that" and making the text continuous after the colon.

21. On page 25481, column 3, § 265.193, paragraph (g), line 14 is corrected by italicizing the word "or" and removing the number "(2)."

22. On page 25483, column 1, § 265.193, paragraph (i)(1), line 3, the reference to "§ 265.191(a)" is corrected to read "§ 265.191(b)(5)."

§ 270.16 [Corrected]

23. On page 25486, column 1, § 270.16, paragraph (a), line 4 is corrected by inserting the word "as" after the word "engineer."

24. On page 25486, column 2, § 270.16, paragraph (e), line 4, the reference to § 264.191(c)" is corrected to read "§ 264.192(a)(3)(ii)."

§ 271.1 [Corrected]

25. On page 25486, column 3, § 271.1 Table 1 is corrected by inserting the page number "25422" under the heading of "Federal Register Reference."

[FR Doc. 86-18456 Filed 8-14-86; 8:45 am]
BILLING CODE 6560-50-M

federal register

Friday
August 15, 1986

Part X

Department of Education

34 CFR Parts 617 and 619

Graduate Academic Facilities Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 617 and 619

Graduate Academic Facilities Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations to implement the Graduate Academic Facilities Program, authorized under Title VII, Part B of the Higher Education Act of 1965, as amended. These regulations establish eligibility conditions, selection criteria, and other terms and conditions for applicants and grant recipients under this program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Charles I. Griffith, Director, Division of Higher Education Incentive Programs, Office of Higher Education Programs, Office of Postsecondary Education, U.S. Department of Education, (Room 3022, ROB–3), 400 Maryland Avenue, SW., Washington, DC, 20202. Telephone (202) 245–3253.

SUPPLEMENTARY INFORMATION: Title VII, Part B of the Higher Education Act (20 U.S.C. 1132c) authorizes a program of construction assistance grants to graduate institutions of higher education. Recipients under this program use their grants for the construction, reconstruction and renovation of graduate academic facilities or for the acquisition of special research equipment at such facilities. Applicable legislation directs that construction assistance grants under this program chiefly enable eligible recipients to construct new facilities or improve existing facilities so that grantees would—

- Economize on the use of energy resources;
- Comply with the Architectural Barriers Act of 1968, section 504 of the Rehabilitation Act of 1973, or other environmental protection or health and safety laws, if such requirements were not in effect at the time such facilities were constructed;
- Improve research facilities, including libraries, and acquire special research equipment;
- Accommodate unusual increases in enrollments; or
- Detect, remove, or contain asbestos hazards.

On April 22, 1986, the Secretary published in the Federal Register a notice of proposed rulemaking for the Graduate Academic Facilities Program. Interested parties were provided 30 days to submit their comments to the Secretary. A summary of the significant comments received and the Secretary's responses to those comments are included in this preamble. No major changes were made in the final regulations.

Summary of Comments and Responses

General Comments

Comment. Several commenters were concerned about the omission from the proposed regulations of any references to undergraduate institutions of higher education which, in the view of the commenters, places undergraduate institutions in a disadvantageous position for receiving grant assistance. The commenters stated that there were no references to undergraduate institutions or undergraduate academic facilities in the name and description of the program (§ 619.1), the program eligibility section of the regulations (§ 619.2), the program definitions (§ 619.4), and the selection criteria for the research facilities category of funding (§ 619.36).

Response. No change has been made. As stated in the notice of proposed rulemaking, the regulations for Title VII, Part B, were drafted on the basis of the permanent legislation which authorizes grant assistance for graduate institutions only. The Department of Education Appropriation Acts for 1985 and 1986 directed that funds provided for fiscal year 1985 and 1986 be made available to both undergraduate and graduate institutions. Therefore, funds for these two years will be awarded to both undergraduate and graduate institutions, as stated in the Application Notice for 1986. The Department has decided not to include the directives in regulations that implement permanent legislation because the directives are only applicable for the fiscal years in which they were made and the Congress may decide not to extend the directives in subsequent years.

Comment. Several commenters expressed concern that no provision was made in the proposed regulations for a State review of applications. They believed that States are responsible for verifying application data and for developing State-wide plans and priorities for construction projects and, therefore, the regulations should require that applications be reviewed by State authorities.

Response. A change has been made. The Secretary has reconsidered the Department's position and agrees that program applications should be reviewed by State authorities for the reasons expressed by the commenters. Therefore, application procedures under Executive Order 12372, Intergovernmental Review of Government Programs, and under the Department's implementing regulations, Part 79 of the Education Department General Administrative Regulations, have been made applicable to this program. However, because these regulations will become effective after the closing date of the fiscal year 1986 grant competition, the provisions will only apply to future grant competitions.

Comment. One commenter recommended that: (1) A designated percentage of funds be made available for 2-year institutions and (2) grant funds enable eligible recipients to make construction improvements for new or existing facilities to accommodate increased enrollment in curriculums with high technology equipment.

Response. No change has been made. The Secretary has no authority to earmark funds for special purposes other than the funding categories authorized by the Congress. Although 2-year institutions with curriculums in high technology equipment are eligible to apply for funding, the funding category pertaining to unusual increases in enrollment was not designated as a priority because the Department's data project future declines in enrollment nationwide.

Comment. One commenter believed that the issue of asbestos removal in universities is of such magnitude that the program funds available would be miniscule in comparison to need. Hence, this aspect of the program should be limited to only a relative percentage of the total cost of the reconstruction or renovation costs.

Response. No change has been made. The Secretary recognizes not only the need for the abatement of asbestos hazards, but also other needs of institutions of higher education. To place a percentage limit on various needs within the context of the five major funding categories would be difficult. Instead, the Secretary will establish funding priorities, as stated in §§ 619.11 and 619.30. In addition, grants are limited to 50% of the eligible project development costs.

Comment. One commenter supported the proposed regulations and suggested that some consideration be given to a low interest loan program in addition to the maximum 50 percent grant level.

Response. No change has been made. A loan program is authorized under Title VII, Part C of the Act; however, no funds have been appropriated for that program.

Comment. Several commenters proposed that the Secretary establish a mechanism which would allow input from the academic and scientific community for an evaluation of the regulations after the first grant competition, for the selection and identification of panelists who review research facilities applications under § 619.36, for establishing research priorities, and for determining research facilities and equipment priorities.

Response. No change is necessary. The Secretary plans to make every effort to convene members of the higher education and scientific community to evaluate the regulations, priorities, and selection criteria after the first grant competition. Several representatives from the higher education community met with Department officials in June of 1985 to provide their advice and recommendation on the selection criteria. In addition to the comments received in response to the proposed regulations, the Secretary also welcomes any written suggestions for improving the regulations after the grant competition. Department staff will contact the academic and scientific community in the selection of panelists, in accordance with the requirement in the statute.

Section 619.2—Who is eligible to apply for a grant under the Graduate Academic Facilities Program?

Comment. One commenter emphasized that there is a critical need to improve the deteriorating state of research facilities in universities. According to the commenter, this need is supported by a recent report issued by the National Science Foundation. The commenter indicated that while the need of 4-year colleges is no less important, the inclusion of 4-year colleges in the program would dilute the effect of the program.

Response. No change has been made. Although Title VII, Part B concerns graduate academic facilities, the Congress appropriated FY 1985 and 1986 funds for Part B for both undergraduates and graduate institutions. The Secretary does not have the authority to exclude 4-year colleges from the 1986 grant competition for grants under Title VII–B of the Higher Education Act.

Section 619.4—What definitions apply to the Graduate Academic Facilities Program?

Comment. Several commenters expressed concern that the definition of "unusual increases in enrollment" only takes into consideration a full-time enrollment (FTE) of at least 100 students and an FTE increase of at least 10 percent over a three-year period. The commenters believed that colleges whose enrollment increase occurred over five or more years and who lack adequate facilities would not be eligible for funding under the category of unusual increases in enrollment. One of the commenters also suggested that a minimum measure of square feet per student should be considered in order to help colleges who are in dire need of space.

Response. No charge has been made. To carry out the intent of the Congress, the Secretary defined the term "unusual increases in enrollment," as given in the regulations, to assure that program funds would be awarded only to those institutions with the greatest enrollment increases. To assure that enrollment increases represent the current situation at an institution of higher education, the three most current years were used, rather than five years, since enrollments at some institutions may have increased four or five years ago but decreased in the last one or two years. In addition, the use of existing academic facilities, as measured by the amount of assignable square feet per FTE student, is one of the general criteria used in evaluating an application.

Comment. One commenter indicated that the use of capacity/enrollment ratios and square feet/FTE student should not be selection criteria for awarding funds. The commenter stated that: (1) The program is directed to the support of graduate institutions, and these criteria do not meet the needs of community colleges; (2) funding is needed to support the kinds of facilities required for economic development and high technology careers; and (3) the ratios are only a function of the enrollment of the institution; they are irrelevant to more pressing issues.

Response. No change has been made. The criteria selected are written to implement Title VII–B of the legislation, the Graduate Academic Facilities Program, and are intended to be a general measure of current utilization for all applicant institutions. Under the Department of Education Appropriation Acts of 1985 and 1986, the community colleges which require facilities for economic development and high technology careers are eligible to apply for funds in accordance with the Application Notice published in the Federal Register on June 9, 1986.

Section 619.10—What kinds of projects are funded by the program?

Comment. One commenter requested that the program provide funding for industrial training equipment, in addition to research equipment, by adding another purpose to the program. This program would be for the construction or renovation of academic facilities which enhance economic and industrial development.

Response. No change has been made. The regulations were prepared for the purpose of implementing the authorizing legislation. In any event, the Secretary does not have the authority to provide grants for industrial training equipment under Title VII–B of the Higher Education Act.

Comment. One commenter requested that in subpart C, an addition to research should be the training of students in the use of "state of the art" equipment, to meet congressional intent.

Response. No change has been made. Subpart C, which contains only § 619.20, makes no reference to research. The Secretary does not have the authority to provide grants for the training of students in the use of "state of the art" equipment under Title VII, Part B of the Higher Education Act.

Section 619.20—What limitations apply to the number of applications that may be submitted?

Comment. One commenter representing many colleges and universities supported the limitation of one application per campus.

Response. No change is necessary. The commenter supported the application procedure stated in the regulations.

Section 619.30—How are applications evaluated?

Comment. One commenter was concerned that, where two or more project categories are established as funding priorities (for example, research facilities and energy conservation) under § 619.30(c), applicants requesting funding for these two categories would be penalized if a new energy conservation facility is proposed and the institutions had previously done a superior job in conserving energy but want funds for a new energy conservation project. Another commenter said 2-year colleges would be eliminated because they could not address as many priorities as other institutions.

Response. No change has been made. If an applicant requested funding for a research facility and an energy conservation project and had done a superior job in energy conservation, the project would not be penalized because the selection criteria for energy conservation under § 619.32(a) and (b) reward the applicant for past and current energy practices. In addition, no penalty is attached to applications for fewer than all categories.

Comment. Several commenters were concerned about the impact of priorities and priority points on undergraduate institutions, particularly the selection of research facilities as a priority. In order to provide equal treatment for 2- and 4-year colleges and not give an advantage to senior [graduate] institutions, suggestions were made to select at least two or more priority areas, and to eliminate the use of the 25 priority points under § 619.30(c).

Response. No change has been made. Since priorities are established in the Department's annual Application Notices published in the **Federal Register** and not in the regulations, no change is necessary. In establishing priorities for the years in which the Congress makes program funds available to both undergraduate and graduate institutions, the Secretary will consider establishing at least two priority categories, if priorities are established at all. For the current year's awards, the Secretary also eliminated the use of the 25 priority points in § 619.30(c) (renumbered § 619.30(d)), in order to ensure undergraduate institutions an equal opportunity for funding.

Comment. One commenter indicated that the ranking process could be vitiated through the use of 25 points for projects meeting the Secretary's priorities and through the use of a review panel as specified in § 619.30(c) and (e).

Response. No change has been made. Under the regulations up to 25 additional points may be awarded to certain applicants which meet priorities selected by the Secretary. This authorization permits the Secretary to use program funds for the highest national priorities. With regard to the use of a panel of specialists in making grants, the Secretary is required, under Title VII, Part B of the authorizing legislation, to obtain the advice and recommendations of a panel of specialists.

Comment. Several commenters stated that the selection criteria should not give points for costly projects. Some suggested that the selection criteria be changed to allow for lower total dollar value projects to be in the competition. Two of the commenters stated that expensive projects should not be given the highest numbers of points and that less expensive projects should be considered on the same basis as expensive ones.

Response. No change has been made. No additional points are given to costly projects. Points are given to institutions of higher education which demonstrate need for the proposed project. In the Department of Education's engineering review of a project, every attempt is made to ensure that project costs are not elaborate or extravagant.

Comment. One commenter hoped that, under Subpart D, § 619.30, proposals could be evaluated on the basis of need and matching funds so that local institutions may have a vested interest.

Response. No change has been made. § 619.31 includes selection criteria based on the need for facilities and the financial need of institutions of higher education. Matching costs are required of all types of applicants because no grant may exceed 50 percent of the total eligible development costs, as stated in § 619.50.

Section 619.31—What selection criteria are used to evaluate existing academic facilities and financial need?

Comment. One commenter stated that the weighting factors in § 619.31 apply to the total institution and, while it is impossible in many cases to separate facilities and equipment used by graduate and undergraduate programs, there should be some method for doing this. It was suggested that the use of graduate academic facilities could be based on the ratio of graduate FTE students to undergraduate FTE students. Another commenter stated that the assignable square feet for FTE students does not permit an assessment of effective use of facilities that reflects the differing missions of institutions. The commenter also said that the inclusion of financial need in the same section appears to bias the selection process against institutions that have worked hard and have succeeded in providing generally adequate capital support for their students, but which, nevertheless, have serious facilities needs in particular areas.

Response. No change has been made. The general criteria in § 619.31 are intended to apply to the total institution. The commitment to and use of graduate research facilities and equipment will be evaluated under § 619.36(a) of the program regulations. The intent of § 619.31 is to help determine the need for academic facilities and the financial need at the institution. The Secretary agrees that there is no consistent method applicable to all institutions for separating graduate and undergraduate facilities and equipment and, therefore, in order to give each applicant the opportunity to apply on an equal footing, allowed 40 points for data that would affect all applicants equally. The 60 additional points were assigned to the specific funding categories authorized by the Congress.

Comment. One commenter stated that comprehensive universities [compared with smaller universities] can possibly benefit when data on the cost per FTE student and square feet per FTE student are used as evaluation criteria in § 619.31. The suggestion was made to use a weighted factor for students in medicine, dentistry, law, pharmacy, etc. If a weighted factor is not used, perhaps the school in its grant application could report only on the cost and on the square footage for undergraduate students.

Response. No change has been made. The criteria in § 619.31 were developed to provide common data for all types of applicant institutions. Weighted factors would be extremely difficult to apply because institutions have so many different missions and needs. Data required in the application cannot relate solely to undergraduate costs and students since Title VII, Part B of the legislation relates to graduate academic facilities.

Section 619.36—What selection criteria are used to evaluate research facilities, including libraries, and the acquisition of special research equipment?

Comment. One commenter indicated that the selection criteria for a research facility project are extremely flexible and that the evaluation and ranking of these projects by a panel of specialists would definitely be skewed, particularly since all other criteria are evaluated quantitatively. The commenter also stated that the guidelines or directions given by the Secretary to the panel will not be known by applicants.

Response. No change has been made. The quality of research programs should not be measured exclusively by quantitative data. The Secretary has, therefore, designated 40 discretionary points and 20 quantitative points, in addition to the 40 quantitative points on the general selection criteria in § 619.31, for evaluating research facility projects. Just as in all Department of Education discretionary grant programs, panelists will be required to evaluate proposals based on selection criteria and on the priorities selected by the Secretary, all of which are published in the **Federal**

Register. No additional guidelines or directions will be given.

Comment. Three commenters said that no 2-year college would be able to qualify for funding under the selection criteria in § 619.36, since the mission of 2-year colleges is academic instruction, not pure research. The intent of the Congress was to provide funding for both undergraduate and graduate institutions.

Response. No change has been made. The regulations were prepared on the basis of the permanent legislation which authorizes eligibility for graduate institutions only. Therefore, the selection criteria were developed to fund research facilities at graduate institutions. Under the Department of Education Appropriation Acts of 1985 and 1986, 2-year colleges would still be eligible to apply for funding under another grant category.

Comment. Two commenters writing on behalf of many colleges and universities stated that the selection criteria for research facilities projects will reward institutions with the highest expenditures for research because expenditures are based on a percentage of total educational and general expenditures (§ 619.36(a)). As a result, this criterion discriminates against many 4-year institutions which face the greatest difficulty in obtaining support for research and research facilities from other government agencies. Although the primary mission of many 4-year institutions is "instruction," these institutions also support competitive research activities on campus. In addition, one of the commenters stated that under § 619.36(f) undergraduate institutions would be measured against graduate institutions with regard to a project's capacity to supply highly qualified personnel with graduate degrees for the community, industry, and government for research and teaching. The commenter stated that independent undergraduate institutions comprise nearly half of the fifty most productive campuses at yielding baccaluareate graduates that eventually obtain Ph.D.'s. The commenter urged sensitivity to the missions of both undergraduate and graduate institutions in developing a criterion for measuring institutional productivity. The second commenter recommended that criterion (a) be eliminated and only criteria (b) through (f) be retained to avoid bias toward institutions with large research expenditures.

Response. No change has been made. Both commenters are correct in interpreting the criteria for selecting projects involving research facilities and in evaluating the impact on undergraduate institutions. Because the regulations were written to implement the Graduate Academic Facilities Program authorized under Title VII, Part B, not Part A of the Higher Education Act which relates to undergraduate academic facilities, the selection criteria were developed for facilities at graduate institutions of higher education.

Section 619.50—What are the funding levels?

Comment. One commenter representing many colleges and universities supported the funding levels established in § 619.50 (a), (b), and (c). The commenter, however, recommended that a maximum grant of $1 million per institution be established to help distribute scarce federal dollars to the maximum number of institutions.

Response. No change has been made. The annual Application Notice for new awards will contain an estimated maximum grant amount for the program. The amount will be based on the appropriation level and will allow for a fair distribution of program funds.

Other Charges

In § 619.3, "What regulations apply to the graduate academic facilities program," the Department of Education now includes § 75.217 and §§ 75.219 through 75.222 of the Education Department General Administrative Regulations (EDGAR) as applying to the program. The notice of proposed rulemaking proposed to exclude those sections of EDGAR. The sections cited in EDGAR apply to discretionary grant programs. Graduate Academic Facilities Program applications involving research facilities and equipment which are partially evaluated by panels of specialists should follow discretionary grant procedures. The references that would have excluded § 75.217 and §§ 75.219 through 75.222 have been deleted.

In § 619.41, "What are the specific rules for determining eligible development costs," the Secretary has added to paragraph (c)(4) a statement that no costs for construction or built-in equipment will be allowed if those costs were included in a construction or built-in equipment contract before the Secretary concurs in the award of that contract. The notice of proposed rulemaking only stated that the costs would not be allowed if the contract was entered into before the date the applicant filed its Title VII–B program application. The purpose of this modification is to ensure that the contract is in compliance with all Federal construction requirements.

Printing omissions and errors have also been corrected throughout the regulations.

Executive Order 12291

The regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Intergovernmental Review

This program is being made subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 619

Academic facilities, Colleges and universities, Construction, reconstruction, and renovation, Equipment, Research.

Citation of Legal Authority: A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Number 84.172—Construction, Reconstruction, and Renovation of Academic Facilities)

Dated: August 12, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by removing Subpart C of Part 617, and adding a new Part 619 as follows:

PART 617—FINANCIAL ASSISTANCE FOR CONSTRUCTION, RECONSTRUCTION, OR RENOVATION OF HIGHER EDUCATION FACILITIES

1. The authority citation for Part 617 is revised to read as follows:

Authority: 20 U.S.C. 1132a–1132e–1, unless otherwise noted.

2. Part 617 is amended by removing Subpart C, and the table of contents of Part 617 is amended accordingly.

3. A new Part 619 is added to read as follows:

PART 619—GRANTS FOR CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF GRADUATE ACADEMIC FACILITIES

Subpart A—General

Sec.

619.1 What is the Graduate Academic Facilities Program?
619.2 Who is eligible to apply for a grant under the Graduate Academic Facilities Program?
619.3 What regulations apply to the Graduate Academic Facilities Program?
619.4 What definitions apply to the Graduate Academic Facilities Program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

619.10 What kinds of projects are funded by the Program?
619.11 What are the funding priorities?

Subpart C—How Does One Apply for a Grant?

619.20 What limitations apply to the number of applications that may be submitted?

Subpart D—How Does the Secretary Make a Grant?

619.30 How are applications evaluated?
619.31 What selection criteria are used to evaluate existing academic facilities and financial need?
619.32 What selection criteria are used to evaluate energy conservation projects?
619.33 What selection criteria are used to evaluate the removal of architectural barriers, and environmental protection or health and safety standards mandated by law?
619.34 What selection criteria are used to evaluate the detection, removal, or containment of asbestos hazards?
619.35 What selection criteria are used to evaluate unusual increases in enrollment?
619.36 What selection criteria are used to evaluate research facilities, including libraries, and the acquisition of special research equipment?

Subpart E—How Does the Secretary Determine the Amount of the Grant Award?

619.40 What are the general rules for determining eligible development costs?
619.41 What are the specific rules for determining eligible development costs?

Subpart F—What Conditions Apply to Awards Under the Program?

619.50 What are the funding levels?
619.51 What are the financial considerations for approval or selection?
619.52 Must the grant award instrument be recorded?
619.53 What are the conditions for the recovery of payments?

Authority: 20 U.S.C. 1132a–1132e–1, unless otherwise noted.

Subpart A—General

§ 619.1 What is the Graduate Academic Facilities Program?

The Graduate Academic Facilities Program provides grants to graduate institutions of higher education for the construction, reconstruction, and renovation of graduate academic facilities or, in some cases for the acquisition of special research equipment. The grants may be used for new or existing academic facilities if the primary purpose of the project is to carry out one or more of the kinds of projects described in § 619.10.

(Authority: 20 U.S.C. 1132c)

§ 619.2 Who is eligible to apply for a grant under the Graduate Academic Facilities Program?

Graduate institutions of higher education are eligible to apply for grants under this program.

(Authority: 20 U.S.C. 1132c)

§ 619.3 What regulations apply to the Graduate Academic Facilities Program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, and 79.

(b) The regulations in this Part 619.

(Authority: 20 U.S.C. 1132)

§ 619.4 What definitions apply to the Graduate Academic Facilities Program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in EDGAR, 34 CFR Part 77.1:

Applicant
Application
Award
Budget
Department
EDGAR
Facilities
Fiscal year
Grant
Grantee
Nonprofit
Private
Public
Recipient
Supplies
Secretary
Work of art.

(b) *Revised EDGAR definitions.* The following terms defined in EDGAR, 34 CFR Part 77.1 are redefined for this part as follows:

"Acquisition" means taking ownership of property through purchase at fair market value.

"Equipment" means machinery, fixtures, and other items necessary for maintenance and operation of a facility, except books, computer software, instructional materials, and items involving current operating expenses such as fuel, supplies, and serviceable parts. Equipment may consist of—

(1) "Built-in equipment", which includes permanent nonmovable fixtures to a facility;

(2) "Initial equipment", which includes items necessary for installation in connection with construction of a facility;

(3) "Movable equipment", which includes movable fixtures and furniture necessary and appropriate for the functioning of an academic facility taking into account the specific purposes of the facility; and

(4) "Special research equipment", which includes equipment used in connection with a research program at graduate institutions of higher education.

"Project" means the construction activity or the acquisition of special research equipment that is proposed for funding by an applicant for assistance under this program.

(c) *Other definitions that apply to this part.* The following definitions also apply to this part:

"Academic facilities" means buildings or structures necessary and appropriate for instruction of students, for research, or for administration of educational programs and student and faculty services at an institution of higher education. Academic facilities include instructional and library facilities, instruction-related facilities, and related supporting facilities, but do not include facilities such as—

(1) Dormitories, residence halls, or similar facilities designed for residence or habitation;

(2) Infirmaries or similar facilities designed for outpatient care;

(3) Facilities intended for events for which admission is to be charged the general public;

(4) Gymnasiums, stadiums, swimming pools, student centers, or other similar facilities designed for athletic or recreational activities;

(5) Facilities used for religious worship or sectarian activities, or used

in connection with a program conducted by a school or department of divinity; or

(6) Facilities used by a school of medicine, school of dentistry, school of osteopathy, school of pharmacy, school of optometry, school of podiatry, school of nursing, or school of public health, unless the facilities—

(i) Are owned, operated, and maintained by a parent or affiliated institution of higher education which exercises corporate control over the particular school;

(ii) Require conversion or modernization of energy utilization techniques to economize on the use of energy resources; and

(iii) Support activities, services, or structures maintained by a parent or an affiliated institution of higher education.

"Act" means the Higher Education Act of 1965, as amended. Unless otherwise indicated, references to titles in the regulations in this part are to titles of the Act.

"Assignable area" means the square footage of floor space in facilities which is designed and available for assignment to specific functional purposes, such as instruction, research, and administration, but does not include—

(1) Areas used for general circulation within a building;

(2) Areas for public washrooms;

(3) Areas for building maintenance or custodial services; or

(4) Areas in central maintenance and utility facilities that exist only to support the operation and use of other structures on the campus and that are not available for assignment to specific functional purposes.

"Branch campus" means, within an institution of higher education, a unit that—

(1) Is separately organized;

(2) Is located apart from the parent institution;

(3) Meets the definition of an institution of higher education under the Act as an independent unit; and

(4) Has its own Federal Interagency Committee on Education (FICE) identification number.

"Capacity/enrollment ratio" means—

(1) The ratio of the assignable area of instructional and library facilities to the total student clock-hour enrollment at the campus of an institution, and

(2) For purposes of this definition, "student clock-hour enrollment" means the aggregate clock hours (sometimes called contact hours) per week in classes or supervised laboratory or shop work of those students enrolled in credit courses—i.e., attending credit courses at the institution's campus. A campus having formally established independent study programs may include systematically determined equivalents of credit hours but only include those hours when the relevant facility is being used by those students.

"Construction" means the erection of new structures, the rehabilitation, conversion, or improvement of existing structures, or the acquisition of existing structures and land thereunder.

"Eligible development costs" means the amount of necessary and reasonable expenses that would be incurred by construction of a project and that would be subject to reimbursement under this program, excluding any expenses reimbursed under any other Federal construction grant and any non-Federal funds required to be expended as a condition for the grant.

"FTE student" means full-time-equivalent student, as that term is defined for the Higher Education General Information Survey (HEGIS).

"Graduate institution" means an institution of higher education within the meaning of section 1201(a) of the Act that provides at least one post-baccalaureate program of study leading to an advanced degree.

"Other facilities used by students" means, in connection with projects relating to asbestos hazards, any campus facilities used by students even if those facilities are ineligible for Federal assistance under this program.

"Research facilities, including libraries" means academic facilities used in connection with research programs at graduate institutions of higher education.

"Research program" means an organized activity which has as its primary objective the creation, organization, and dissemination of new knowledge or technology. It embraces only those activities designed to produce research outcomes commissioned by an agency either external to the institution or authorized by an organizational unit within the institution. It does not include research funded from the instructional budget of the institution.

"Unusual increases in enrollment'" means an increase in full-time-equivalent enrollment of at least 100 full-time-equivalent students and an increase of more than 10 percent of FTE enrollment over a period of three years going back to the fall term beginning three years prior to the filing date for applications.

(Authority: 20 U.S.C. 1132a, 1132d–1, 1132e. 1132e–1)

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 619.10 What kinds of projects are funded under the program?

(a) Funds are awarded for projects which enable graduate institutions of higher education to—

(1) Economize on the use of energy resources;

(2) Comply with the requirements of—

(i) The Architectural Barriers Act of 1968;

(ii) Section 504 of the Rehabilitation Act of 1973; or

(iii) Other Federal, State or local laws dealing with environmental protection or health and safety, if the laws impact on facilities after they were constructed;

(3) Detect, remove, or contain asbestos hazards;

(4) Accommodate unusual increases in enrollment; or

(5) Improve research facilities, including library facilities, and acquire special research equipment.

(b) In order for facilities to be eligible for assistance under paragraphs (a)(2)(iii) and (a)(3) of this section, the applicant must submit with its application satisfactory evidence to demonstrate that the degree of non-compliance with legal requirements, and the degree of threat from, and exposure to, asbestos hazards, pose a significant threat to the health and safety of the students.

(Authority:) 20 U.S.C. 1132c)

§ 619.11 What are the funding priorities?

The Secretary may announce from among those categories listed in 34 CFR § 619.10 funding priorities under this program in any given fiscal year through a notice published in the **Federal Register.**

(Authority: 20 U.S.C. 1132a–1132–1)

Subpart C—How Does One Apply for a Grant?

§ 619.20 What limitations apply to the number of applications that may be submitted?

An applicant may submit only one application for assistance under this program in any given fiscal year. The Secretary considers as a separate applicant a branch campus of a mulitcampus institution, If a project is funded by this program, the Secretary will not accept any future applications for funding for the same project.

(Authority: 20 U.S.C. 1132c)

Subpart D—How Does the Secretary Make a Grant?

§ 619.30 How are applications evaluated?

(a) The Secretary evaluates an application for a grant on the basis of—

(1) The general criteria in § 619.31 for all applicants; and

(2) The specific criteria in §§ 619.32 through 619.36 for applicants of particular categories of projects.

(b)(1) The Secretary awards up to a total of 100 points based on a maximum possible score of—

(i) 40 points for the general criteria in § 619.31; and

(ii) 60 points for the specific criteria in §§ 619.32 through 619.36, as applicable.

(2) The maximum possible score for each criteria is indicated in parentheses following the heading of that criterion.

(c) If a project includes two or more of the categories in § 619.10, the Secretary applies—

(1) The general criteria in § 619.31 (up to 40 points); and

(2) Each applicable set of specific criteria in §§ 619.32 through 619.36. The Secretary awards the average score (up to 60 points) received by the project under those sets of specific criteria.

(d) The Secretary may award up to 25 additional points to each application that meets one or more priority categories established under § 619.11. Subject to the 25-point limit, the Secretary may award a higher number of points to an application that addresses more than one priority category, and may award a lower number of points to an application that addresses both a priority and a nonpriority category. The Secretary announces the number of additional points for each priority category and type of application in a notice published in the **Federal Register**.

(e) The Secretary ranks all eligible applications in accordance with the total number of points each application receives in accordance with this section. Before making grants, the Secretary obtains the advice and recommendations of a panel of specialists who are competent in evaluating program applications. The Secretary may, based on the advice and recommendations of the panel, deviate from the initial rank order. Regular, full-time employees of the Federal Government may not be appointed as panel members.

(Authority: 20 U.S.C. 1132c)

§ 619.31 What selection criteria are used to evaluate existing academic facilities and financial need?

The Secretary evaluates each application for a grant under this program on the basis of the following criteria:

(a) *Use of existing academic facilities.* (Total: 10 points)

(1) The Secretary assesses the extent to which the applicant makes use of its existing academic facilities by considering the amount of assignable square feet in those facilities per FTE student.

(2) The Secretary assigns the highest scores to applicants with the smallest amount of square feet per FTE student.

(b) *Capacity/enrollment ratio.* (Total: 10 points)

(1) The Secretary further assesses the applicant's use of its existing academic facilities as reflected by the institution's capacity/enrollment ratio.

(2) The Secretary assigns the highest scores to applicants with the lowest capacity/enrollment ratio.

(c) *Financial Need.* (Total: 20 points)

(1) The Secretary considers the basic education and general annual expenditures per FTE student, based on data reported in the annual National Center for Education Statistics Survey, "Financial Statistics of Institutions of Higher Education," for the most recent year for which data are available.

(2) The Secretary assigns the highest scores to applicants with the lowest expenditure per FTE student.

(Authority: 20 U.S.C. 1132c)

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 619.32 What selection criteria are used to evaluate energy conservation projects?

For projects based on energy conservation, the Secretary applies the following criteria:

(a) *Life cycle energy analysis.* (Total: 6 points)

(1) The Secretary considers whether the proposed project is based on a least-cost life cycle energy analysis that reflects the life cycle cost of the project over a twenty-year period.

(2) The Secretary awards six points for the criterion.

(b) *Integrated system design.* (Total: 6 points)

(1) The Secretary considers whether the proposed project exhibits an integrated system design, including a mix of energy sources and/or cogeneration systems, and/or other integrated system designs.

(2) The Secretary awards six points for this criterion.

(c) *Use of coal, solar energy, and renewable resources.* (Total: 8 points)

(1) The Secretary considers whether the proposed project promotes the use of coal, solar energy, or renewable resources.

(2) The Secretary awards eight points for this criterion.

(d) *Energy savings internal rate of return to the project.* (Total: 20 points)

(1) The Secretary considers the extent to which the proposed project is likely to provide a significant return in energy cost savings on the investment represented by the cost of the project.

(2) The internal rate of return is calculated on the basis of projected energy cost savings and the total cost of the project, except for interior finishing and furnishing expenses (i.e. seating, blackboards, laboratory fixtures, etc.).

(3) Projected energy cost savings for renovation projects of existing buildings are the difference between—

(i) The average routine energy costs over the last three years, adjusted to current prices; and

(ii) Projected annual energy cost resulting from completion of the project.

(4) Projected energy cost savings for new construction are the difference between—

(i) The projected annual energy costs of a conventionally-designed building of the same kind as the one proposed (as calculated by an architectural engineering firm or consulting services firm); and

(ii) Projected annual energy costs resulting from the completion of a least-cost energy design project.

(5) The Secretary assigns the highest scores to applicants demonstrating the highest projected internal rates of return in energy cost savings.

(e) *Energy savings internal rate of return to the Federal investment share.* (Total: 20 points)

(1) The Secretary considers the extent to which the Federal investment in the proposed project is likely to provide a significant return in energy savings.

(2) The internal rate of return is calculated on the basis of the projected energy cost savings as determined under paragraph (d) of this section and the total Federal investment in the project.

(3) The Secretary assigns the highest scores to applicants demonstrating the highest projected internal rates of return in energy cost savings.

(Authority: 20 U.S.C. 1132c)

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 619.33 What selection criteria are used to evaluate the removal of architectural barriers, and environmental protection or health and safety standards mandated by law?

(a) For projects to remove architectural barriers to meet accessibility requirements which were not in effect at the time the facilities

were constructed, the Secretary applies the following criteria:

(1) *Amount of assignable square feet of academic facilities to be made accessible by the project.* (Total: 30 points)

(i) The Secretary considers the amount of assignable square feet of academic facilities per FTE student to be made accessible to the handicapped by the project.

(ii) The Secretary assigns the highest scores to applicants with the largest amount of square feet to be made accessible per FTE student.

(2) *Percentage of assignable square feet of academic facilities to be made accessible by the project.* (Total: 30 points)

(i) The Secretary considers the percentage of assignable square feet of academic facilities to be made accessible to the handicapped by the project.

(ii) The Secretary assigns the highest scores to applicants with the largest percentage of square feet to be made accessible by the project.

(b) For reconstruction or renovation projects to meet environmental protection or health and safety standards mandated by Federal, State, or local law, if those requirements were not in effect at the time the facilities were constructed, the Secretary applies the following criteria:

(1) *Cost per FTE student.* (Total: 30 points)

(i) The Secretary considers the cost per FTE student of the applicant's compliance with the law.

(ii) The Secretary assigns the highest scores to applicants with the highest cost per FTE student.

(2) *Impact of the project.* (Total: 20 points)

(i) The Secretary considers the number of FTE students affected by the project.

(ii) The Secretary assigns the highest scores to applicants with the largest number of FTE students affected by the project.

(3) *Relative impact of the project.* (Total: 10 points)

(i) The Secretary considers both the number of FTE students affected by the project and the FTE enrollment of the institution.

(ii) The Secretary measures the relative impact of the project by dividing the number of FTE students affected by the project by the total number of FTE students enrolled, and assigns the highest scores to applicants with the highest relative impact.

(Authority: 20 U.S.C. 1132c(b); 1132a(2) (A) and (B)

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 619.34 What selection criteria are used to evaluate the detection, removal, or containment of asbestos hazards?

For projects to detect, remove, or contain asbestos hazards, the Secretary applies the following criteria:

(a) *Amount of gross square feet of academic or other facilities with known or suspected asbestos hazards used by students.* (Total: 30 points)

(1) The Secretary considers the amount of gross square feet of academic or other facilities with known or suspected asbestos hazards per FTE student.

(2) The Secretary assigns the highest scores to applicants with the largest amount of square feet with known or suspected asbestos hazards per FTE student.

(b) *Estimated cost of detecting, removing, or containing asbestos hazards.* (Total: 30 points)

(1) The Secretary considers the estimated cost per FTE student of one or more of the following: detecting, removing, or containing asbestos hazards.

(2) The Secretary assigns the highest scores to applicants with the highest cost per FTE student.

(Authority: 20 U.S.C. 1132c(b); 1132(a)(5))

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 619.35 What selection criteria are used to evaluate unusual increases in enrollment?

For projects based on unusual increases in enrollment, the Secretary applies the following criteria:

(a) *Increase in enrollment.* (Total: 30 points)

(1) The Secretary considers the extent of the actual numerical and percentage increases in FTE student enrollment at the institution or branch campus where construction would occur.

(2) The Secretary considers the increases over a three-year period starting with the fall semester that began three years preceding the most recent fall semester.

(3) The Secretary awards up to 15 points for the actual numerical increase and up to 15 points for the percentage increase, and assigns the highest scores to applicants with the largest increases in FTE student enrollment.

(b) *Increase in capacity.* (Total: 30 points)

(1) The Secretary considers the amount and percentage by which the project increases the assignable square feet of academic facilities at an institution.

(2) The Secretary awards up to 15 points for the actual numerical increase and up to 15 points for the percentage increase, and assigns the highest scores to applicants with the largest increases of assignable square feet of academic facilities per FTE student.

(Authority: 20 U.S.C. 1132c)

(Approved by the Office of Management and Budget under control number 1840–0580)

§ 619.36 What selection criteria are used to evaluate research facilities, including libraries, and the acquisition of special research equipment?

For projects based on research facilities, including libraries, and the acquisition of special research equipment, the Secretary applies the following criteria:

(a) *Institutional commitment to research programs.* (Total: 10 points)

(1) The Secretary considers the applicant's expenditures for research programs as a percentage of the applicant's average annual educational and general expenditures for graduate programs, as reported in the annual National Center for Education Statistics Survey, "Financial Statistics of Institutions of Higher Education," for the three most recent years for which data are available.

(2) The Secretary assigns the highest scores to applicants with the largest percentage of expenditures for research programs.

(b) *Age of special research equipment.* (Total: 10 points)

(1) The Secretary considers the percentage of the applicant's special research equipment which is more than five years old as of the opening of the fall semester preceding the application closing date.

(2) The Secretary assigns the highest scores to applicants with the largest percentage of special research equipment which is more than five years old.

(c) *Quality of existing research programs.* (Total: 10 points)

(1) The Secretary considers the quality of the applicant's existing research programs, in particular the adequacy of the existing research facilities and special research equipment, and the relevance of the proposed project to current research programs.

(2) A panel of specialists evaluates the quality of existing programs.

(d) *Increase in research capacity.* (Total: 10 points)

(1) The Secretary considers the extent to which the proposed project will increase the applicant's capacity for

research or improve its existing research capacity.

(2) A panel of specialists evaluates the increase in research capacity.

(e) *Funding priorities.* (Total: 10 points)

(1) The Secretary considers the extent to which the proposed project improves the applicant's capacity for research in those academic disciplines, such as physical sciences and mathematics, engineering and environmental sciences, biological sciences, social sciences and education, and arts and humanities, which the Secretary, through a notice published in the Federal Register, establishes as priorities for the program in any given fiscal year.

(2) A panel of specialists evaluates the extent to which the project meets the Secretary's funding priorities.

(f) *Impact of project.* (Total: 5 points)

(1) The Secretary considers the extent to which the proposed project is likely to increase the capacity of the applicant to supply highly qualified personnel critically needed by the community, industry, and government for research and teaching.

(2) A panel of specialists evaluates the potential impact of the project.

(g) *Scope of project.* (Total: 5 points)

(1) The Secretary considers the extent to which the proposed project is likely to contribute significantly to the distribution of research programs of high quality throughout the United States.

(2) A panel of specialists evaluates the scope of the project.

(Authority: 20 U.S.C. 1132(b), 1132c, 1132a(3))

(Approved by the Office of Management and Budget under control number 1840–0580)

Subpart E—How Does the Secretary Determine the Amount of the Grant Award?

§ 619.40 What are the general rules for determining eligible development costs?

The Secretary determines eligible development costs by assessing the reasonableness and appropriateness of expenses that would be incurred by the project taking into account—

(a) The timing of when certain expenses would be incurred by the applicant; and

(b) The applicant's compliance with the regulations in this part.

(Authority: 20 U.S.C. 1132a, 1132c, 1132e–1)

§ 619.41 What are the specific rules for determining eligible development costs?

(a) An applicant selected to receive a grant under this program shall obtain from the Secretary a determination of eligible development costs before it may award any contract for construction or purchase any equipment that may later be financed with assistance under this program.

(b) The Secretary approves costs only after the Secretary or the appropriate official of another Federal agency has approved Federal assistance for the construction.

(c) The Secretary excludes the following from eligible development costs:

(1) Any costs for land incurred before the applicant files the application.

(2) Any cost for the acquisition of a structure incurred before the applicant files the application.

(3) Any costs for equipment, including special research equipment, incurred before the date the applicant files the application.

(4) Any cost for construction or built-in equipment if the contract was entered into before the date the applicant files the application, or before the date the Secretary concurs in the award of the construction or built-in equipment contract.

(5) Any cost for ineligible facilities included in the total development costs.

(Authority: 20 U.S.C. 1132–1(3))

Subpart F—What Conditions Apply to Awards under this Program?

§ 619.50 What are the funding levels?

(a) An award of a construction grant under this program may not exceed 50 percent of the total eligible development costs.

(b) The Secretary does not award a construction grant for less than $25,000.

(c) The Secretary awards to institutions of higher education in any one State not more than 12.5 percent of the total funds available for grants under this program in any fiscal year.

(Authority: 20 U.S.C. 1132c)

§ 619.51 What are the financial considerations for approval or selection?

(a) The Secretary does not approve or select applications from institutions that are in default on a construction loan previously made under Part C of Title VII of the Act or Title IV of the Housing Act of 1950, whether or not the Secretary has agreed to any deferment, or in default of any other obligation made under any other Federal program.

(b) The Secretary does not approve or select applications from institutions that are financially insolvent.

(Authority: 20 U.S.C. 1132c)

§ 619.52 Must the grant award instrument be recorded?

A grantee under this program shall record its grant award instrument in the appropriate land registry records.

(Authority: 20 U.S.C. 1132c)

§ 619.53 What are the conditions for the recovery of payments?

The recipient or its successor shall pay to the Secretary an amount which bears to the value of the facility at that time the same ratio as the amount of the grant bore to the original cost of the facility, if, within twenty years after completion of construction of an academic facility under this program, a grant recipient or its successor in title or possession ceases to be a public or nonprofit institution, or the facility ceases to be used as an eligible academic facility, unless the Secretary determines that there is good cause for releasing the recipient or its successor from its obligation.

(Authority: 20 U.S.C. 1132e)

[FR Doc. 86–18477 Filed 8–14–86; 8:45 am]

BILLING CODE 4000–01–M

Reader Aids

Federal Register

Vol. 51, No. 158

Friday, August 15, 1986

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

27515-27810.....1
27811-28058.....4
28059-28218.....5
28219-28320.....6
28321-28508.....7
28509-28686.....8
28687-28798.....11
28799-28920.....12
28921-29084.....13
29085-29200.....14
29201-29442.....15

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

3.....28509

3 CFR

Proclamations:

5514.....27515
5515.....28218
5516.....29200

Administrative Orders:

Memorandums:
July 31, 1986.....27811
August 1, 1986.....28219

5 CFR

532.....28799
890.....28799
1201.....28321

Proposed Rules:

870.....28576
871.....28576
872.....28576
873.....28576
890.....28576

7 CFR

2.....29201
26.....28800
29.....28687
51.....27813, 28802
272.....28196
273.....28196
400.....29202
402.....29204
403.....29204, 29205
405.....29205
409.....29204, 29205
410.....29204
411.....29204, 29205
413.....29204, 29205
414.....29204
415.....29204, 29205
416.....29204, 29205
417.....29204, 29205
418.....29204-29207
419.....29204-29207
420.....29204-29207
421.....29204-29207
422.....29204, 29205
423.....29204, 29205
424.....29204-29207
425.....29204, 29205
426.....29204
427.....29204-29207
428.....29204, 29205
429.....29204, 29205
430.....29204, 29205
431.....29204, 29205
432.....29204-29207
433.....29204, 29205
435.....29204, 29205
436.....29204, 29205
437.....29204, 29205
438.....29204, 29205
439.....29204, 29205
440.....29204
441.....29204
442.....29204
443.....29204
444.....29204
445.....29204
446.....29204, 29205
447.....29204, 29205
448.....29204-29207
449.....29204
450.....29204, 29205
451.....29204, 29205
652.....29208
770.....28921
908.....27816, 28509, 29208
910.....28059
911.....27517
918.....27518
923.....29209
932.....28922
991.....28802
1064.....28687
1102.....28687
1106.....28687
1108.....28687
1126.....28687
1138.....28687
1240.....29210
1427.....28321
1475.....28803
1930.....27636
1944.....27636
1951.....27636
1965.....27636

Proposed Rules:

52.....28719
235.....29236
250.....29236
252.....29236
255.....29236
330.....29401
340.....29401
441.....29246
447.....27862
656.....29251
985.....29109
987.....29251
1007.....29252
1011.....29252
1046.....29252
1065.....27553, 28721, 28819
1068.....28819
1079.....27554, 28819
1093.....29252
1094.....29252
1096.....29252
1098.....29252
1136.....27866
1137.....27554
1139.....27555

1709.....28722

8 CFR

238.....28060, 28923, 29085

Proposed Rules:

214.....27867, 28576
248.....27867

9 CFR

92.....28805, 29210

Proposed Rules:

92.....27871

10 CFR

Ch. I.....29211
50.....27817, 28044
73.....27817, 27822
110.....27825

Proposed Rules:

50.....27872

11 CFR

Proposed Rules:

100.....28154
106.....28154
9001.....28154
9002.....28154
9003.....28154
9004.....28154
9005.....28154
9006.....28154
9007.....28154
9012.....28154
9031.....28154
9032.....28154
9033.....28154
9034.....28154
9035.....28154
9036.....28154
9037.....28154
9038.....28154
9039.....28154

12 CFR

1.....29085
17.....29089
207.....27518
220.....27518
221.....27518
224.....27518
303.....27826
501.....28221
522.....28221, 28690
523.....28221
741.....27522

Proposed Rules:

205.....28589
226.....28245, 29256

13 CFR

310.....27828

14 CFR

21.....28509-28525
23.....28509-28525
25.....28322
39.....27523-27527, 27828-27830, 27832, 27833, 28061-28066, 28322, 28323, 28527, 28691, 28806, 28807, 29090, 29092, 29093, 29211-29213
71.....27833-27835, 28067, 28325, 28326, 28528, 28923
75.....28809
97.....28326
121.....28322
1204.....27528
1209.....28924

Proposed Rules:

Ch. I.....28386, 28725
1.....28095
36.....27556
39.....27557, 27874, 28386, 28832, 29110, 29256-29259
71.....28388-28390, 28956, 28957, 29261-29263
73.....28095
75.....28096, 28957

15 CFR

20.....28925
370.....28692
371.....28692
373.....28692
374.....28692
379.....28692
399.....28692, 28693

16 CFR

13.....28694, 28695
423.....28222
444.....28328
1500.....28529, 29094

Proposed Rules:

13.....28594, 29265

17 CFR

1.....27529
5.....27529
16.....27529
33.....27529

Proposed Rules:

231.....28596
240.....28096
241.....28596

18 CFR

37.....27835
154.....27529, 28331
157.....27529, 28331
270.....27529, 28331
271.....27529, 28068, 28331
284.....27529. 28331
410.....28810

Proposed Rules:

271.....28102

19 CFR

6.....27836
101.....28070

Proposed Rules:

113.....27875
141.....28390
353.....29046

20 CFR

404.....28544
416.....28544

Proposed Rules:

404.....28834
410.....28834
416.....28834
655.....28599

21 CFR

74.....28331, 28346, 28929
81.....28331, 28346, 28363
82.....28331, 28346
176.....28545
178.....28930
193.....28223
211.....28810
310.....28810
314.....28810
331.....27762
332.....27762
344.....28556
357.....27756
369.....27756
436.....27531
440.....27531
442.....27531
510.....28546
520.....28546, 29215
522.....28546, 28932
546.....28546
556.....28932, 29097
558.....28546, 28547, 29097
561.....28223
1308.....28695

Proposed Rules:

1308.....28725, 28727

22 CFR

Proposed Rules:

2a.....28391

23 CFR

635.....27532

24 CFR

20.....28364
35.....27774
200.....28696
203.....28548
204.....28548
207.....27837, 28547, 28699
221.....27837, 28547
251.....28699
255.....28699
300.....27838
390.....28551
511.....28703
888.....28486
905.....27774
965.....27774
968.....27774

Proposed Rules:

35.....27793
203.....28247
510.....27793
511.....27793
570.....27793
590.....27793

26 CFR

1.....28553
20.....28365
25.....28365
602.....28365

27 CFR

19.....28071
250.....28071
270.....28078
275.....28078
290.....28078
295.....28078
296.....28078

Proposed Rules:

4.....28836
5.....28836
7.....28836
270.....28106
275.....28106
290.....28106
295.....28106
296.....28106

29 CFR

1601.....29098
1952.....27534
1960.....28378
2603.....28379
2676.....29215

Proposed Rules:

602.....28840

30 CFR

901.....29098
914.....29100
931.....28553
943.....28554

Proposed Rules:

774.....27558
910.....27559
912.....27559
915.....28729
920.....28600, 28601
921.....27559
922.....27559
933.....27559
935.....29112
937.....27559
939.....27559
941.....27559
947.....27559
950.....27560

31 CFR

16.....28810
315.....28933
332.....28933
352.....28933
353.....28933
545.....28933
550.....28933

Proposed Rules:

10.....29113

32 CFR

90.....28092
706.....27535, 27536, 28933-28941

Proposed Rules:

553.....29115

33 CFR

100.....28706
117.....28380, 28707, 29101
140.....28381
142.....28381
161.....27839
165.....28382, 28383

Proposed Rules:

117.....27877
334.....28248

34 CFR

617.....29434
619.....29434
624.....29196
668.....29396
674.....28312
796.....29190

36 CFR

34.....29101

Proposed Rules:

7.....28107-28110
60.....28204

63.....28204

37 CFR

1.....28052, 28555
2.....28052, 28555, 28707
306.....27537

39 CFR

10.....28383

Proposed Rules:

10.....28958

40 CFR

33.....28710
52.....27537, 27840, 27841, 28813
60.....29104
61.....27956
65.....28224, 29216
81.....27843-27845
180.....28225-28227
260.....28664, 29430
261.....28296, 28664, 29217-29219, 29430
262.....28664, 29430
263.....28664
264.....28556, 29430
265.....28556, 29430
270.....29430
271.....28094, 28664, 29430
761.....28556

Proposed Rules:

52.....27560, 27878, 29116
65.....28113
81.....29268
85.....28114
135.....29426
141.....28730
180.....28249, 28603, 28959
271.....28604
716.....27562
721.....28119
763.....28914
795.....27880
799.....27880, 28840

41 CFR

101-26.....29104
101-40.....27539

42 CFR

405.....27847, 28710, 29386
417.....28569
482.....27847

43 CFR

11.....27674

Public Land Orders:

6620.....28229
6622.....28229

Proposed Rules:

4.....28846

44 CFR

11.....29222
64.....28230, 28232

Proposed Rules:

81.....28119

45 CFR

232.....29223
233.....29223
1612.....27539
1630.....29076
2002.....28384

Proposed Rules:

74.....28960

46 CFR

Proposed Rules:

31.....29116
61.....29116
71.....29116
91.....29116
160.....29117
167.....29116
169.....29116
189.....29116
502.....29124

47 CFR

22.....28236
64.....29230
68.....28237
73.....27552, 28237, 28942, 28943, 29105
87.....29106
97.....28237

Proposed Rules:

0.....27566
1.....27566
2.....28249
21.....27566
22.....27566
23.....27566
62.....27566
67.....29126
73.....27566, 27567, 28961, 29128-29130, 29273
74.....27566
90.....29130, 29273

48 CFR

223.....28943, 29231
228.....28943, 29231
232.....28946
242.....28943, 29231
252.....28943, 29231
522.....28815
552.....28815
1801.....27848
1804.....27848
1805.....27848
1806.....27848
1807.....27848
1809.....27848
1813.....27848
1814.....27848
1815.....27848, 28574
1819.....27848
1825.....27848
1827.....27848
1832.....27848
1836.....27848
1837.....27848
1839.....27848
1842.....27848
1845.....27848
1847.....27848
1851.....27848
1852.....27848, 28574
1853.....27848

Proposed Rules:

501.....29131
513.....29131
553.....29131

49 CFR

1.....29231, 29233
571.....28238

Proposed Rules:

Ch. X.....28847
171.....28962
172.....28962
173.....28605, 28962
385.....28607
391.....27567
531.....28730
1058.....28249
1152.....28962
1312.....28731

50 CFR

20.....28946
285.....28240, 28241
604.....28575
630.....28575
641.....28094
655.....28241
661.....27859, 28717, 28954, 29234
671.....28242
672.....28385
674.....27860, 28243, 29107

Proposed Rules:

17.....29362
20.....29274
216.....28320, 28963
611.....28731, 29131
630.....29132
685.....29131

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 13, 1986

Order Now!

The United States Government Manual 1986/87

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and subject/agency indexes.

Of significant historical interest is Appendix A, which describes the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Administration.

$19.00 per copy

Publication Order Form

Order processing code: ***6159**

☐ **YES,** please send me the following indicated publications:

☐ _____ copies of THE UNITED STATES GOVERNMENT MANUAL, 1986/87 at $19.00 per copy. S/N 022-003-01132-3.

1. The total cost of my order is $_____ International customers please add an additional 25%. All prices include regular domestic postage and handling and are good through 1-31-87. After this date, please call Order and Information Desk at 202-783-3238 to verify prices.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐–☐

☐ VISA, CHOICE or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev. 8-86)

4. **Mail To:** Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9325