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Briefings on How To Use the Federal Register—
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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: January 29; at 9 am.

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

RESERVATIONS: Mildred Isler 202-523-3517

PORTLAND, OR

WHEN: February 17; at 9 am.

WHERE: Bonneville Power Administration Auditorium, 1002 N.E. Holladay Street, Portland, OR.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:

Portland 503-221-2222
Seattle 206-442-0570
Tacoma 206-383-5230

LOS ANGELES, CA

WHEN: February 18; at 1:30 pm.

WHERE: Room 8544, Federal Building, 300 N. Los Angeles Street, Los Angeles, CA.

RESERVATIONS: Call the Los Angeles Federal Information Center, 213-894-3800

SAN DIEGO, CA

WHEN: February 20; at 9 am.

WHERE: Room 2S31, Federal Building, 880 Front Street, San Diego, CA.

RESERVATIONS: Call the San Diego Federal Information Center, 619-293-6030

Contents

Federal Register

Vol. 51, No. 250

Wednesday, December 31, 1986

Agricultural Marketing Service
RULES
Oranges (navel) grown in Arizona and California, 47203

Agriculture Department
See also Agricultural Marketing Service; Federal Crop Insurance Corporation; Food and Nutrition Service; Rural Electrification Administration
RULES
Agricultural commodities; financing of sale and exportation, 47408

Air Force Department
RULES
Aircraft:
Air Force installations; use by other than DOD aircraft, 47227
NOTICES
Meetings:
Scientific Advisory Board, 47281
Procurement:
Contracts—
Conversion determinations, 47282

Army Department
NOTICES
Meetings:
Science Board, 47281
(2 documents)

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

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Romania, 47280

Defense Department
See also Air Force Department; Army Department
NOTICES
Meetings:
Science Board task forces, 47281
(2 documents)

Economic Regulatory Administration
NOTICES
Consent orders:
Shell Oil Co., 47282
Natural gas exportation and importation:
Direct Energy Marketing Ltd., 47287

Education Department
NOTICES
Grants; availability, etc.:
Indian education programs—
Formula grant program, 47282

Energy Department
See Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department; Southwestern Power Administration

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Minnesota, 47237
Tennessee, 47239
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
Sulfiting agents on grapes, 47240
Toxic substances:
Polychlorinated biphenyls (PCBs)—
Electrical transformer use; transformer fire; clarification, 47241
PROPOSED RULES
Toxic substances:
Asbestos Hazard Emergency Response Act; implementation, 47265
NOTICES
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
Region II, 47301
Grants; debarments, suspensions, and voluntary exclusions under EPA assistance programs, 47302
Meetings:
Chesapeake Bay Executive Council, 47304
Pesticide registration, cancellation, etc.:
Aidex Corp. et al., 47305
Pesticides; emergency exemption applications:
Metalaxyl, etc., 47304
Toxic and hazardous substances control:
Premanufacture notices receipts, 47306, 47307
(2 documents)

Executive Office of the President
See Management and Budget Office

Federal Aviation Administration
RULES
Air traffic operating and flight rules:
Special Federal Aviation Regulation No. 47; noise restricted aircraft; special flight authorization, 47219
Airworthiness directives:
Boeing, 47209, 47210
(2 documents)
British Aerospace, 47211
Mitsubishi Heavy Industries, Ltd., et al., 47213
Control zones, 47216, 47217
(2 documents)
Jet routes, 47218
Standard instrument approach procedures, 47221
Transition areas, 47215, 47216
(2 documents)
VOR Federal airways, reporting points, and jet routes, 47217
PROPOSED RULES
Airworthiness directives:
Champion Aircraft Co., Inc., 47249

Gulfstream Aerospace Corp., 47250
Piper, 47251
Restricted areas, 47257, 47259
(2 documents)
Transition areas, 47253–47256
(5 documents)
NOTICES
Advisory circulars; availability, etc.:
Transport category airplanes—
Airborne windshear warning systems, 47351
Airport noise compatibility program:
Sarasota-Bradenton Airport, FL, 47351
Meetings:
Aeronautics Radio Technical Commission, 47352
(2 documents)

Federal Crop Insurance Corporation
RULES
Crop insurance; various commodities:
Tobacco, 47198

Federal Deposit Insurance Corporation
RULES
Foreign activities of insured State nonmember banks; CFR correction, 47208
Freedom of Information Act; implementation; disclosure of confidential information; CFR correction, 47208
NOTICES
Agency information collection activities under OMB review, 47310

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act:
Incremental pricing—
Acquisition cost thresholds, 47222
NOTICES
Small power production and cogeneration facilities; qualifying status:
Badger Creek Cogen, Inc., 47288
Bear Mountain Cogen, Inc., 47288
Chalk Cliff Cogen, Inc., 47288
Cogentrix of Virginia, Inc., 47288
First Energy Associates, 47289
Foster Wheeler Power Systems, Inc., 47292
Live Oak Cogen, Inc., 47292
Oxford Cogeneration Associates, 47292
Panhandle Eastern Pipe Line Co., 47293
Ramapo Cogeneration Limited Partnership, 47293
Rockville Cogeneration Associates, 47293
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 47297
Allegheny Power Service Corp., 47294
Bonneville Power Administration, 47294
Canal Electric Co., 47294
Central Maine Power Co., 47289
Colorado Interstate Gas Co., 47289
Consumers Power Co., 47294
Dayton Power & Light Co., 47294
Florida Gas Transmission Co., 47298
Florida Power & Light Co., 47294
Green Mountain Power Corp., 47291
Iowa Electric Light & Power Co., 47294
Niagara Mohawk Power Corp., 47299
Northwest Pipeline Corp., 47298
Pacific Power & Light Co., 47294
(2 documents)
Portland General Electric Co., 47291
Puget Sound Power & Light Co., 47291
Sabine Pipe Line Co., 47299
South Georgia Natural Gas Co., 47299
Southern California Edison Co., 47296, 47297
(6 documents)
Texas Eastern Transmission Corp., 47298
Utah Power & Light Co., 47291
Washington Water Power Co., 47292

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Holmes County, FL, 47352

Federal Maritime Commission
NOTICES
Agreements filed, etc., 47310

Fiscal Service
RULES
Treasury certificates of indebtedness; State and local government series, etc., 47400

Food and Drug Administration
RULES
Food additives:
Adjuvants, production aids, and sanitizers—
Di-n-Alkyl(C_8–C_{10})dimethylammonium chloride, n-alkyl-(C_{12}–C_{18})benzyldimethylammonium chloride, tetrasodium ethylenediamine tetracetate, etc., 47223
NOTICES
Food additive petitions:
FilmTec Corp., 47311
Medical devices; premarket approval:
Coherent, Inc., Systems 990, 8900, 7900, and 7910 Nd: YAG Lasers, 47310

Food and Nutrition Service
RULES
Food stamp program:
Employment and training requirements, 47378
PROPOSED RULES
Child nutrition programs:
National school lunch, breakfast, and child care food programs—
Infant meal pattern, 47245

Health and Human Services Department
See also Food and Drug Administration; Health Care Financing Administration
RULES
Acquisition regulations:
Amendments
Correction, 47353

Health Care Financing Administration
PROPOSED RULES
Medicare:
Home health agencies, independent laboratories, and providers of outpatient physical therapy and/or speech pathology services; reporting and recordkeeping requirements, 47266
NOTICES
Medicare:
Fiscal intermediaries and carriers performance; criteria and evaluation standards; inquiry
Correction, 47353

Hearings and Appeals Office, Energy Department
NOTICES
Applications for exception:
Decisions and orders, 47300

Interior Department
See Land Management Bureau; Minerals Management Service; National Park Service

International Trade Administration
NOTICES
Export trade certificates of review, 47276

International Trade Commission
NOTICES
Import investigations:
Brass sheet and strip from—
Brazil, Canada, and Korea, 47315
Preshipment inspection programs and their effect on U.S. commerce, 47315
Ventilated motorcycle helmets, 47314
Xenon lamp dissolver slide projectors and components, 47314

Interstate Commerce Commission
NOTICES
Rail carriers:
Cost recovery percentages, 47316
Railroad revenue adequacy standards, 47317
Railroad services abandonment:
Baltimore & Ohio Railroad Co., 47316

Justice Assistance Bureau
NOTICES
Grants; availability, etc.:
Mariel-Cubans incarcerated in State facilities; State reimbursement, 47317

Justice Department
See Justice Assistance Bureau

Labor Department
See also Mine Safety and Health Administration; Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities under OMB review, 47318

Land Management Bureau
NOTICES
Closure of public lands:
Oregon, 47311
Meetings:
California Desert District Grazing Advisory Board, 47312
Shoshone District Grazing Advisory Board, 47312
Oil and gas leases:
Wyoming, 47312
Realty actions; sales, leases, etc.:
Nevada, 47313

Management and Budget Office
NOTICES
Budget rescissions and deferrals, 47356

Mine Safety and Health Administration
NOTICES
Safety standard petitions:
Barnes & Tucker Co., 47319
Barnhart Coal Co., 47319
Blue Diamond Coal Co., 47320, 47321 (3 documents)
Clinchfield Coal Co., 47321 (2 documents)
Consolidation Coal Co., 47322 (2 documents)
Southern Ohio Coal Co., 47322

Minerals Management Service
NOTICES
Meetings:
Outer Continental Shelf Advisory Board, 47313
Outer Continental Shelf; development operations coordination:
Phillips Petroleum Co., 47313

National Credit Union Administration
NOTICES
Agency information collection activities under OMB review, 47323

National Oceanic and Atmospheric Administration
NOTICES
Fishery conservation and management:
Atlantic Coast striped bass fisheries; 1985 survey results, 47277

National Park Service
NOTICES
Concession contracts; franchise fees; determination, 47314

Nuclear Regulatory Commission
RULES
Access authorization for licensee personnel, 47204
Export and import of nuclear equipment and material:
Uranium from South Africa, 47207
Production and utilization facilities; domestic licensing:
Correspondence, reports, applications, etc.; submission procedures, 47206
PROPOSED RULES
Production and utilization facilities; domestic licensing:
Nuclear power plants—
License renewal, 47249
NOTICES
Environmental statements; availability, etc.:
General Public Utilities Nuclear Corp., 47323
Philadelphia Electric Co., 47324
Virginia Electric & Power Co., 47326
Westinghouse Electric Corp., 47327
Regulatory agreements:
Illinois, 47327
Applications, hearings, determinations, etc.:
Vermont Yankee Nuclear Power Corp., 47324

Office of Management and Budget
See Management and Budget Office

Pension and Welfare Benefits Administration
RULES
Employee benefit plans:
Plan assets; definition
Correction, 47226

Pension Benefit Guaranty Corporation
RULES
Single employer plans:
Employer liability underpayments and overpayments; interest rates changes, 47226

NOTICES
Multiemployer pension plans:
Bond/escrow exemption requests—
MDS Acquisition Corp., 47341
Withdrawal liability in plans without unfunded vested benefits; interpretation, 47342

Personnel Management Office
RULES
Retirement:
Federal employees retirement system—
Basic annuity; coverage, 47195
Court orders affecting retirement benefits, 47189
Goverment costs, 47185

Physician Payment Review Commission
NOTICES
Meetings, 47344

Public Health Service
See Food and Drug Administration

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
Pedernales Electric Cooperative, Inc., 47276

Securities and Exchange Commission
PROPOSED RULES
Investment companies:
Exchange offers involving open-end investment companies and unit investment trusts, 47260
NOTICES
Self-regulatory organizations; proposed rule changes:
Options Clearing Corp., 47349
Applications, hearings, determinations, etc.:
Arch Fund, Inc., et al., 47344
Cablevision Investment of Detroit, Inc., 47346
Lutheran Brotherhood Variable Insurance Products Co. et al., 47347

Small Business Administration
RULES
Disaster loans:
Interest rates, historical information; removal, 47209

Southwestern Power Administration
NOTICES
Federal hydroelectric power and energy projects; temporary power sales; proposed policy, 47300

State Department
NOTICES
Meetings:
International Radio Consultative Committee, 47350
International Telegraph and Telephone Consultative Committee, 47350
(3 documents)

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration; Federal Highway Administration

Treasury Department
See Fiscal Service

Separate Parts In This Issue

Part II
Office of Management and Budget, 47356

Part III
Department of Agriculture, Food and Nutrition Service, 47378

Part IV
Department of the Treasury, Fiscal Service, 47400

Part V
Department of Agriculture, 47408

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.

5 CFR
841 (2 documents)..... 47185, 47189
842..... 47195

7 CFR
17..... 47408
271..... 47378
272..... 47378
273..... 47378
277..... 47378
436..... 47198
907..... 47203

Proposed Rules:
210..... 47245
220..... 47245
226..... 47245

10 CFR
25..... 47204
50..... 47206
95..... 47204
110..... 47207

Proposed Rules:
50..... 47249

12 CFR
309..... 47208
347..... 47208

13 CFR
123..... 47209

14 CFR
39 (4 documents)..... 47209–47213
71 (5 documents)..... 47215–47217
75 (2 documents)..... 47217, 47218
91..... 47219
97..... 47221

Proposed Rules:
39 (3 documents)..... 47249–47251
71 (5 documents)..... 47253–47256
73 (2 documents)..... 47257, 47259

17 CFR

Proposed Rules:
270..... 47260

18 CFR
282..... 47222

21 CFR
178..... 47223

29 CFR
2509..... 47226
2510..... 47226
2550..... 47226
2622..... 47226

31 CFR
344..... 47400

32 CFR
855..... 47227

40 CFR
52 (2 documents)..... 47237, 47239
180..... 47240
761..... 47241

Proposed Rules:
763..... 47265

42 CFR

Proposed Rules:
405..... 47266

48 CFR
301..... 47353
302..... 47353
303..... 47353
304..... 47353
305..... 47353
306..... 47353
307..... 47353
313..... 47353
314..... 47353
315..... 47353
316..... 47353
319..... 47353
322..... 47353
325..... 47353
330..... 47353
332..... 47353
353..... 47353

Rules and Regulations

Federal Register
Vol. 51, No. 250
Wednesday, December 31, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 841

Federal Employees Retirement System—General Administration; Government Costs

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comment on the rules to implement the Government cost provisions of the Federal Employees Retirement System (FERS) Act of 1986. These rules provide the methodology for computing Government agencies' shares of the cost of funding the basic benefits of FERS, the notice that will be provided for changes in rates, the appeal rights available to agencies, and the initial rates applicable to all agencies.

DATES: Interim rules effective January 1, 1987; comments must be received on or before March 2, 1987.

Agency appeals of the normal cost percentages must be filed no later than July 1, 1987.

ADDRESSES: Send comments to Frank D. Titus, Director, FERS Implementation Task Force; Retirement and Insurance Group; P.O. Box 884; Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street, NW., Washington, DC.

Send or deliver agency appeals of the normal cost percentages to the Board of Actuaries, care of James W. Morrison, Jr., Associate Director for Retirement and Insurance, Office of Personnel Management, Room 4A10, 1900 E Street, NW., Washington, DC 20415.

Send requests for actuarial assumptions and data to the Office of the Actuary, Room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632-5560.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99-335, created a new retirement system for some Federal employees. Section 8423 of title 5, United States Code, as added by FERS Act of 1986, provides for the payment of the Government's share of the cost of the retirement system under FERS. Employees contributions are established by law and constitute only a small fraction of the cost of funding the retirement system; employing agencies are required to pay the remaining costs. The amount of funding required, known as "normal cost," is the entry age normal cost of the provisions of FERS that relate to the Civil Service Retirement Fund (Fund). The normal cost must be computed by OPM in accordance with generally accepted actuarial practice and standards (using dynamic assumptions).

I. Normal Cost Regulations

Section 841.401 of the regulations provides the scope for the regulations in Subpart D, which cover (1) factors considered in the computation of the normal cost under FERS; (2) publication of notice of the normal cost rates for each category of employees; (3) agency appeals of rate determinations; and (4) methodology for determining the amount due from each agency.

Section 841.402 contains definitions for use in these regulations. With the exception of "normal cost percentage," section 841.402 does not repeat definitions of terms that are defined in FERS and used with their statutory meaning. These terms are (1) "Air traffic controller," as defined in section 2109(1) of title 5, United States Code, (2) "Congressional employee," as defined in section 8401(11)(B) of title 5, United States Code; (3) "Firefighter," as defined in section 8401(14) of title 5, United States Code; (4) "Law enforcement officer," as defined in section 8401(17) of title 5, United States Code; (5) "Member," as defined in section 8401(20) of title 5, United States Code; and (6) "Military reserve technician," as defined in section 8401(30) of title 5, United States Code. The term "agency head" is defined by reference to section 105 of title 5, United States Code.

The definitions of "age," "duration on the roll," and "service" contain instructions for rounding fractional years. These terms are used extensively in other definitions.

Sections 841.403 through 841.406 provide the factors considered in computing normal cost. Section 841.403 lists the categories of employees for which separate normal cost calculations must be made. Section 841.404 lists the demographic factors that must be considered. Section 841.405 requires that the economic assumptions of the Board of Actuaries of the Civil Service Retirement System must be used. Section 841.406 provides that OPM will compute Government-wide normal cost percentages for general use by all agencies except those with a special rate resulting from a successful appeal. All normal cost percentages (Government-wide and single agency) are rounded to the nearest one tenth of a percent.

Sections 841.407 and 841.408 regulate setting normal cost percentages. Section 841.407(a) provides that OPM will review and either confirm or modify the normal cost percentages at least every 5 years. Section 841.407(b) states the information that will be provided whenever normal cost percentages are confirmed or modified. This information includes (1) the Government-wide normal cost percentage and any single agency rates for each category of employees; (2) the effective date of any changes; (3) the address for obtaining information on the data and assumptions used in computing the normal cost percentages; (4) the time limit in which an agency may submit an appeal; and (5) the address for filing an appeal.

Section 841.408 regulates the effective date of changes in normal cost percentages. This section attempts to balance OPM's obligation to ensure that the retirement system is sufficiently funded with the agencies' need for sufficient warning of changes in their retirement costs. Changes in Government-wide normal cost percentages will not be effective for at least 3 months after publication. They will be effective at the beginning of a fiscal year unless waiting for the beginning of a fiscal year would cause the effective date to be less than 3 months after the date of publication.

Section 841.408(b) contains a special effective date for the first normal cost percentages that are contained in Appendix A of these rules. This special effective date is necessary to provide funding as soon as FERS becomes operational.

Sections 841.409 through 841.412 regulate agency appeals of application of the Government-wide normal cost percentages to them. The Government-wide normal cost percentages are presumed to apply to all agencies. Agencies that can prove that the normal cost of FERS for their employees is lower than the Government-wide average have the right under section 8423(c) of title 5, United States Code, to appeal to the Board. An agency filing a successful appeal will receive a single agency rate based on the normal cost for that agency. This special rate will apply only to that agency.

Section 841.409(a) limits the right to appeal to agencies with at least 1,000 or 500 employees depending on the category for which the agency is seeking the single agency rate. Fewer employees would prevent any meaningful determination of a specific cost for the agency's employees. Section 841.409(b) provides a 6-month time limit for appeals. This much time is provided to allow agencies to prepare the actuarial report required by § 841.410(b), and still provide some reasonable finality to normal cost percentage determinations.

Section 841.410 regulates how agencies file appeals. Section 8423(c) of title 5, United States Code, limits the right to appeal to the head of the agency. This limitation is intended to ensure that the decision to appeal is taken only after serious consideration at the highest level of the agency.

Section 841.410(b) requires an actuarial report supporting an appeal. The report must specifically address each of the factors used in computing the normal cost percentages.

Section 841.411 regulates consideration of appeals. Paragraphs (a) and (b) of this section clarify that the appealing agency has the burden of proof on all issues. Paragraph (c) of this section absolutely bars consideration of a late appeal. Paragraph (d) of this section states the elements that the agency must establish to meet its burden of proof. The agency must convince the Board that the data used in the agency's actuarial analysis is sufficient and reliable. The agency must further convince the Board that the assumptions used in the agency's actuarial analysis are justified and that the factors when considered all together yield a different normal cost for the group at issue in the appeal from the normal cost for the same group calculated on a Government-wide basis. (As a general rule, 5 years of data are required for a sufficient and reliable actuarial analysis.) Because normal cost percentages are based on long range projections and necessarily contain some margin for error, a significantly different normal cost (i.e. a difference of 10% of the normal cost being appealed) must be shown before a single agency rate will be authorized.

Section 841.412 states the effect of a successful appeal. It provides that a special normal cost percentage will be prospectively applied to all employees in the agency in the relevant category for a period of at least 3 years. After the 3-year period, OPM may continue the rate if the agency shows it is still justified or place the agency back under the Government-wide normal cost percentage. The latter would give the agency a new appeal right.

Section 841.413 provides instructions to agencies for computing the amount they owe including the employee contributions. Each agency must determine the total amount of basic pay it pays to employees in each category of employees. The amount the agency must pay to OPM for each category of employees is the product of that total amount of basic pay multiplied by the appropriate normal cost percentage shown below and repeated in Appendix A to Subpart D of these regulations. This amount includes both the agency share and the employee contributions.

II. Normal Cost Percentages

The initial Government-wide cost percentages, including the employee contributions, are—

Members	23.5%
Congressional employees	23.8%
Law enforcement officers and firefighters	31.2%
Air traffic controllers	33.3%
Military reserve technicians	16.0%
All other employees	16.1%

OPM has an abundance of data on the general category of employees and used such data in calculating the normal cost for the group. Complete sets of data for the special categories has not previously been collected. For these groups the best available data have been utilized and mechanisms have been put in place to capture the data on a systematic basis in the future.

Information about the data and assumptions used in calculating these normal cost percentages is available upon written request to the address for such requests provided in the "addresses" section of this rulemaking document. All requests must be made in writing. Telephone requests will not be accepted.

Under section 553 (b)(3)(B) and (d)(3) of title 5, United States Code, I find that good reason exists for waiving the general notice of proposed rulemaking and to make these regulations effective in less than 30 days. Agencies begin to bear the cost of FERS effective at the beginning of the first pay period on or after January 1, 1987. Delaying the effective date of these regulations would place agencies in the untenable position of not knowing their obligations under FERS in time to act before payments are due. In addition, the volume of regulations necessary to implement the entire new retirement system and the need to have these regulations in place on the statutory effective date of that system (January 1, 1987) so that necessary forms and information pamphlets can be prepared, ordered, and distributed, and to allow the new retirement system to begin operation on its effective date, makes the publication of proposed rules impracticable.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Government agencies' share of the cost of funding the basic benefits of FERS.

List of Subjects in 5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Title 5, Code of Federal Regulations, by adding Part 841 to read as follows:

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—Government Costs

Sec.

841.401 Purpose and scope.
841.402 Definitions.

Sec.

841.403 Categories of employees for computation of normal cost percentages.
841.404 Demographic factors.
841.405 Economic assumptions.
841.406 Determination of normal cost percentages.
841.407 Notice of normal cost percentage determinations.
841.408 Effective date of normal cost percentages.
841.409 Agency appeal right.
841.410 Contents of petition for appeal.
841.411 Appeals procedure.
841.412 Rates determined by appeal.
841.413 Determinations of amount due from each agency.
Appendix A to Subpart D of Part 841—Table of Normal Cost Percentages

Subpart D—Government Costs

Authority: 5 U.S.C. 8461 and 8423.

§ 841.401 Purpose and scope.

(a) The purpose of this subpart is to regulate the Government contributions to the Civil Service Retirement Fund under FERS.

(b) This subpart covers—

(1) Factors considered in the computation of agency contributions under FERS;

(2) Publication of notice of the normal cost rates for each category of employees;

(3) Agency appeals of rate determinations; and

(4) Methodology for determining the amount due from each agency.

§ 841.402 Definitions.

In this subpart—

"Actuary" means an associate or fellow in the Society of Actuaries and one who is enrolled under section 3042 of Pub. L. 93–406, the "Employee Retirement Income Security Act of 1974."

"Administrative expenses" means the normal cost loading applicable to the administration of FERS.

"Age" means age, as of the beginning of the fiscal year, rounded to the nearest birthday.

"Agency head" means, for the executive branch agencies, the head of an executive agency as defined in 5 U.S.C. 105; for the legislative branch, the Secretary of the Senate, the Clerk of the House of Representatives, or the head of any other legislative branch agency; for the judicial branch, the Director of the Administrative Office of the United States Courts; for the Postal Service, the Postmaster General; for any other independent establishment that is an entity of the Federal Government, the head of the establishment.

"Board" means the Board of Actuaries of the Civil Service Retirement System.

"Category of employees" means a grouping of employees under § 841.403.

"Child survivor termination and death rates" means the rate, by age of the child, at which child survivor benefits terminate.

"CSRS" means subchapter III of chapter 83 of title 5, United States Code.

"Death and recovery rates for disability annuitants" means the rate, by age, sex, and duration on the roll, at which disability annuitants are removed from the annuity roll because of death; and the rate, by age, sex, and duration on the roll, at which disability annuitants are removed from the annuity roll because of recovery or restoration to earning capacity.

"Death and remarriage rates for surviving spouses" means the rate, based on the sex of the employee, age of the survivor annuitant, and the duration on the annuity roll, at which spousal survivor annuitants are removed from the annuity roll because of death; and the rate, based on the sex of the employee, age of the survivor annuitant, and the duration on the roll, at which survivor annuitants are removed from the annuity roll because of remarriage.

"Death rates for non-disability annuitants" means the rate, by age and sex of the annuitant, at which non-disability annuitants are removed from the annuity roll because of death.

"Disability retirement rates" means the rate, by age, sex, length of service, and whether the employees are eligible for social security disability benefits, at which employees retire for disability.

"Duration on the roll" means the number of full years on the annuity roll as of the beginning of the fiscal year.

"Economic Assumptions" means the assumptions used by the Board with respect to inflation, interest rates, and wage and salary growth.

"Employee death rates" means the rate, by age and sex of the employees and whether the employees are survived by spouses entitled to survivor annuities, at which employees die in service.

"Employees" means employees as defined in section 8401(11) of title 5, United States Code, and Members, as defined in section 8401(20) of title 5, United States Code.

"Family characteristics of annuitants" means, based on the annuitant's age and sex, and in some cases, on the type of annuity (regular, disability, or deferred), the number and average age of child survivors at the death of the annuitant, the percentage of annuitants with an annuity reduced to provide survivor benefits, the percentage of annuitants who actually leave a surviving spouse entitled to a survivor annuity at the annuitant's death, and the average age of the surviving spouse.

"Family characteristics of employees" means, based on the employee's age at death and sex, the number and average age of child survivors and the average age of the surviving spouse, per death of an employee with a survivor.

"FERS" means chapter 84 of title 5, United States Code.

"Involuntary retirement rates" means, by age and sex of the employee, the rate of involuntary retirements (discontinued service and optional early retirements).

"Merit salary increases" means salary increases, by age and length of service, that are not general salary increases. "Merit salary increases" include promotions and within-grade and similar increases based in whole or in part on employee performance, but do not include comparability increases, Postal Service COLA, or similar adjustments to entire pay scales; or premium pay.

"Military service rates" means the fraction, by age and sex, of employees who have military service to all employees, and the average length of military service and the salary on which their deposits to receive credit for military service are based for these employees.

"Normal cost percentage" or "normal cost" means the entry-age normal cost of the provisions of FERS which relate to the Fund, computed by the Office in accordance with generally accepted actuarial practice and standards (using dynamic assumptions) and expressed as a level percentage of aggregate basic pay.

"Service" means all creditable service, including military service, rounded to the nearest number of years as of the beginning of the fiscal year.

"Single agency rate" means a normal cost percentage for one category of employees in one agency. A single agency rate is set under § 841.412 as a result of a successful appeal.

"Voluntary retirement rates" means the rate, based on the sex, age, and service of the employee, of regular longevity retirements.

"Withdrawal rates" means the rate at which employees leave FERS-covered service without retiring, including employees who are paid refunds and employees who take deferred retirement. These rates are of two types: "not offset for reentry" and "offset for reentry." These rates are by age and service.

§ 841.403 Categories of employees for computation of normal cost percentages.

Normal cost percentages will be determined for each of the following groups of employees:

(a) Members;

(b) Congressional employees;

(c) Law enforcement officers and firefighters;

(d) Air traffic controllers;

(e) Military reserve technicians; and

(f) All other employees.

§ 841.404 Demographic factors.

(a) The Office of Personnel Management (OPM) will consider the factors listed below in determining normal cost percentages. To the extent data are available for the factor by specific category of employees, such data will be used. To the extent category specific data are not available, the most relevant available data will be used.

(1) Distributions of new entrants by age, sex, and service;

(2) Withdrawal rates;

(3) Merit salary increases;

(4) Voluntary retirement rates;

(5) Involuntary retirement rates;

(6) Disability retirement rates;

(7) Employee death rates;

(8) Military service rates;

(9) Family characteristics for employees;

(10) Death rates for non-disability annuitants;

(11) Death and recovery rates for disability annuitants;

(12) Child survivor termination and death rates;

(13) Family characteristics for annuitants; and

(14) Administrative expenses.

(b) Generally, each rate, ratio, or fraction must be separately considered to determine the rates for males and their survivors and the rates for females and their survivors, except those rates for child survivors and merit salary increases.

§ 841.405 Economic assumptions.

The determinations of the normal cost percentage will be based on the economic assumptions determined by the Board. When an agency's case is based in whole or in part on the pattern of merit salary increases specific to the agency or to a category of employees within the agency, the Board may require modification of the economic assumptions concerning salary and wage growth to take into account the combined effect of merit and general wage and salary increases.

§ 841.406 Determination of normal cost percentages.

(a) OPM will determine the Government-wide normal cost percentage for each category of employees. These normal cost percentages will be used by all agencies that have not been granted a single agency rate under § 841.412.

(b) Each normal cost percentage will be rounded to the nearest one-tenth of a percent.

§ 841.407 Notice of normal cost percentage determinations.

(a) No later than 5 years after the publication of a current notice of normal cost percentages, OPM will publish in the **Federal Register** a notice that will contain updated normal cost percentages.

(b) The notice of normal cost percentage will include a statement of—

(1) The Government-wide normal cost percentage and any single agency rates for each category of employees;

(2) The effective date of any changes made by the notice;

(3) The address for obtaining information on the data and assumptions used in computing the normal cost percentages;

(4) The time limit for submission of appeals under § 841.409; and

(5) The address for filing an appeal under § 841.409.

§ 841.408 Effective date of normal cost percentages.

(a) Except as provided in paragraph (b) of this section and in § 841.412, normal cost percentages stated in a notice of normal cost percentages under § 841.407 will be effective at the beginning of the first pay period commencing on or after the later of—

(1) Three months after the date of publication of the notice of normal cost percentages; or

(2) The first October 1 after the date of publication of the notice of normal cost percentages.

(b) The initial normal cost percentages will be effective at the beginning of the first pay period on or after January 1, 1987.

§ 841.409 Agency appeal right.

(a) An agency with at least 1,000 employees in the general category of employees or 500 employees in any of the special categories may appeal to the Board the normal cost percentage for that category as applied to that agency.

(b) No appeal will be considered by the Board unless the agency files, no later than 6 months after the date of publication of the notice of normal cost percentages under § 841.407, a petition for appeal that meets all the requirements of § 841.410.

§ 841.410 Contents of petition for appeal.

(a) To file an appeal, an agency head must, before expiration of the time limit, file with OPM—

(1) A letter of appeal;

(2) An actuarial report; and

(3) A certificate of eligibility (described in paragraph (d) of this section).

(b)(1) The letter of appeal must be in writing and signed by the agency head. Delegation of signatory authority is not permitted.

(2) The letter of appeal may contain any argument the agency wishes to make or may simply submit the actuarial report for consideration.

(c) The actuarial report must contain a detailed actuarial analysis of the normal cost of FERS benefits as applied to the employees of that agency in the category of employees for which the agency is appealing the use of the Government-wide rate. The actuarial report must—

(1) Be signed by an actuary;

(2) Use the economic assumptions under §841.405; and

(3) Specifically address and consider each of the demographic factors listed in § 841.404. The appealing agency is responsible for developing data relating to the first nine demographic factors as they relate to the category of agency employees for which the appeal is being filed. Government-wide demographic factors (available from OPM) will be presumed to be sufficient and reliable for factors 10 through 13 unless the appealing agency is able to demonstrate, through sufficient and reliable data relating to its employees or former employees, the use of alternative factors is appropriate. The fourteenth factor, administrative expenses, will be supplied by OPM.

(d) The certificate of eligibility is a letter from the agency's director of personnel certifying that the agency has the requisite 1,000 or 500 in the category of employees under consideration.

§ 841.411 Appeals procedure.

(a) A Government-wide normal cost percentage is presumed to apply to all agencies. Any agency appealing application of a Government-wide normal cost percentage to any category of employees in its workforce must demonstrate to the satisfaction of the Board that the normal cost percentage for that category of employees in that agency is significantly different from the Government-wide normal cost percentage.

(b) While an agency has an appeal pending, the Government-wide normal

cost percentage continues to apply to that agency.

(c) The Board cannot consider an appeal unless all the documents required for a petition for appeal under § 841.410(a) are filed before expiration of the time limit for an appeal.

(d) The Board cannot sustain an appeal unless the Board finds that—

(1) The data used in the agency's actuarial analysis are sufficient and reliable (As a general rule, at least 5 years of data pertaining to any group of employees must be analyzed before the results are considered sufficient and reliable.);

(2) The assumptions used in the agency's actuarial analysis are justified;

(3) When all relevant factors are considered together, there is a demonstrated difference between the normal cost for the group at issue in the appeal and the normal cost for the same group calculated on a Government-wide basis; and

(4) The difference between the Government-wide normal cost percentage and the single agency rate would be at least 10 percent of the normal cost being appealed.

§ 841.412 Rates determined by appeal.

(a) If the Board finds that a different normal cost is warranted based on an agency appeal, it will establish a single agency rate for the category of employees in that agency.

(b) The single agency rate will be effective at the beginning of the first pay period beginning 30 days after the date of the Board's decision.

(c) A single agency rate may be higher or lower than the Government-wide rate and will remain in force for not less than 3 years.

(d) After a single agency rate has been in force for at least 3 years, OPM may—

(1) Require, no more often than annually, that the agency justify continuation of the rate; and/or

(2) When it publishes a notice of normal cost percentages under § 841.407, terminate the single agency rate.

§ 841.413 Determinations of amount due from each agency.

(a) For each pay period, each agency will determine the total amount of basic pay paid to employees in each category of employees.

(b) For each category of employees, the amount due from each agency for a pay period is the product of—

(1) The total amount of basic pay or employees in that category of employees in that agency; and

(2) The normal cost percentage.

APPENDIX A TO SUBPART D OF PART 841—TABLE OF NORMAL COST PERCENTAGES

Category of employees	Government-wide normal cost [1]
Members	23.5
Congressional employees	23.8
Law enforcement officers and firefighters	31.2
Air traffic controllers	33.3
Military reserve technicians	16.0
All other employees	16.1

[1] Percentages effective at the beginning of the first pay period commencing on or after Jan. 1, 1987.

All normal cost percentages in the above table include employee contributions.

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BILLING CODE 6325-01-M

5 CFR Part 841

Federal Employees Retirement System—General Administration: Court Orders Affecting Retirement Benefits

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is publishing interim regulations to establish procedures for handling court-ordered payments for benefits under the new Federal Employees Retirement System (FERS). These regulations are necessary to implement provisions of the FERS Act of 1986 that require OPM to honor court orders entitling former spouses or legally separated spouses to benefits.

DATES: Interim rules effective January 1, 1987; comments must be received on or before March 2, 1987.

ADDRESSES: Send comments to Frank D. Titus, Director FERS Implementation Task Force; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 884; Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street, NW., Washington DC.

Send court orders affecting retirement benefits under Subpart I of Part 841 to Allotments Branch, Office of Personnel Management, P.O. Box 17, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632-5560.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99-335, created a new retirement system for some Federal employees. Under this system OPM must honor qualifying court orders that give former spouses or legally separated spouses rights to benefits payable under FERS.

These regulations provide that OPM will review court orders when we receive them to determine whether they are qualifying under the criteria established by law and these regulations. When we determine that an order meets these criteria, we will notify the claimant that we will make payment under the court order. We will also notify the employee/retiree of our decision and his or her right to appeal the decision to the Merit Systems Protection Board (MSPB). Payments will be authorized immediately if they are otherwise payable without waiting for the outcome of any appeal. If we determine that a court order does not qualify for payment of benefits under FERS, we will notify the claimant of this decision, specify which criteria were not met, and provide the claimant with his or her right to appeal the decision to MSPB.

Payments from the annuity of a retiree terminate upon the death of the former spouse or legally separated spouse, or earlier if provided by a court order. Survivor annuity payments to a former spouse terminate upon his or her death, or upon remarriage before age 55.

Waiver of Notice of Proposed Rulemaking

Under 5 U.S.C. 553 (b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. FERS is effective January 1, 1987, and OPM needs to have procedures in place to handle court orders that may arrive and affect employees who will be converted to FERS on January 1.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will only affect retirement payments to retired Government employees and spouses.

List of Subjects in 5 CFR Part 841

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income tax, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Part 841 to add and reserve Subparts E through H and to add Subpart I to read as follows:

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

* * * * *

Subpart I—Court Orders Affecting Retirement Benefits

Sec.

841.901 Purpose.
841.902 Definitions.
841.903 Qualifying court orders.
841.904 Applications by former spouses and separated spouses.
841.905 Amounts payable.
841.906 Processing court orders dividing employee retirement benefits.
841.907 Processing court orders affecting survivor annuity benefits.
841.908 Termination of former spouse or separated spouse benefits.
841.909 Court orders preventing payment of refunds of contributions.
841.910 Effective dates.
841.911 Payment only to former spouses and separated spouses.
841.912 Limitations.
841.913 Guidelines on interpreting court orders.
841.914 Liability.
841.915 Receipt of multiple court orders.
841.916 Cost-of-living adjustments.
Appendix A to Subpart I of Part 841—Guidelines for Interpreting State Court Orders Dividing Employee Retirement Benefits
Appendix B to Subpart I of Part 841—Guidelines for Interpreting State Court Orders Awarding Survivor Annuity Benefits to Former Spouses

Subpart I—Court Orders Affecting Retirement Benefits

Authority: 5 U.S.C. 8461.

§ 841.901 Purpose.

This subpart regulates the Office of Personnel Management's adjudication of claims arising out of State court orders that affect retirement benefits under FERS. OPM must comply with qualifying court orders, decrees, or court-approved property settlements in connection with divorces, annulments of marriages, or legal separations of employees, Members, or retirees that award a portion of a former employee's or Member's retirement benefits or a survivor annuity to a former spouse or separated spouse. This subpart prescribes the procedures to be followed by—

(a) A former spouse when applying for benefits based on a court order under section 8445 or 8467 of title 5, United States Code;

(b) A separated spouse when applying for benefits based on a court order under section 8467 of title 5, United States Code; and

(c) The Associate Director in honoring court orders and in making payment to the former spouse.

§ 841.902 Definitions.

In this subpart—

"Associate Director" means OPM's Associate Director for Retirement and Insurance or an OPM official authorized to act on behalf of the Associate Director.

"Court order" means any judgment or property settlement issued by or approved by any court of any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court in connection with, or incident to, the divorce, annulment of marriage, or legal separation of a Federal employee or retiree.

"Employee retirement benefits" means employees' and Members' annuities and refunds of retirement contributions but does not include survivor annuities or one-time payments made pursuant to sections 8424 (d) through (g) of title 5, United States Code.

"FERS" means chapter 84 of title 5, United States Code.

"Former spouse" means (a) in connection with a court order affecting employee retirement benefits, a living person whose marriage to an employee, Member, or retiree has been subject to a divorce or annulment; or (b) in connection with a court order awarding a former spouse annuity, a living person (1) who was married for at least 9 months to an employee, Member, or retiree with at least 18 months of creditable service under FERS; and (2) whose marriage to the employee was terminated prior to the death of the employee, Member, or retiree.

"Former spouse annuity" means a recurring benefit under FERS that is payable to a former spouse after the employee's, Member's, or retiree's death.

"Gross annuity" means the amount of a self-only annuity less any applicable survivor reduction but before any other deductions.

"Member" means a Member of Congress.

"MSPB" means the Merit Systems Protection Board.

"Net annuity" means the amount of annuity payable after deducting from the gross annuity any amounts that are (a) owed by the retiree to the United States; (b) deducted for health benefits premiums pursuant to 5 U.S.C. 8906; (c) deducted for life insurance premiums pursuant to 5 U.S.C. 8714a(d); or (d) deducted for Medicare premiums.

"Qualifying court order" means a court order that meets the requirements of § 841.903.

"Retiree" means a former employee or Member who is receiving recurring payments under FERS based on service by the employee or Member. "Retiree" does not include a current spouse, former spouse, child, or person with an insurable interest.

"Self-only annuity" means the recurring payment to a retiree who has elected not to provide a survivor annuity to anyone.

"Separated spouse" means a living person whose marriage to an employee, Member, or retiree is currently subject to a court order granting a legal separation.

§ 841.903 Qualifying court orders.

(a) A former spouse or separated spouse is entitled to a portion of an employee's retirement benefits only to the extent that the division of retirement benefits is expressly provided for by the court order. The court order must divide employee retirement benefits, award a payment from employee retirement benefits, or award a former spouse annuity.

(b) The court order must state the former spouse's or separated spouse's share as a fixed amount, a percentage or a fraction of the annuity, or by a formula that does not contain any variable whose value is not readily ascertainable from the face of the order or normal OPM files.

(c)(1) For payment from employee retirement benefits, the court order must either state the former spouse's or separated spouse's entitlement to a portion of employee retirement benefits, or direct an employee, Member, or retiree to pay a portion of employee retirement benefits to the former spouse or separated spouse. OPM will pay a former spouse or separated spouse directly unless the court order expressly instructs OPM not to do so.

(2) For awarding a former spouse annuity, the court order must either state the former spouse's entitlement to a survivor annuity or direct an employee, Member, or retiree to provide a former spouse annuity.

(d)(1) For affecting or awarding a former spouse survivor annuity, a court order modifying a decree of divorce or annulment, or modifying any court order or court approved property settlement incident to a decree of divorce or

annulment, will not be honored if it is issued after the retirement of the employee or Member involved.

(2) A court order (including a modification of an earlier order) concerning a survivor annuity for a former spouse will not be honored if it is issued after the death of the employee, Member, or retiree involved.

§ 841.904 Applications by former spouses and separated spouses.

(a) A former spouse (personally or through a representative) or a separated spouse (personally or through a representative) must apply in writing to be eligible for benefits under this subpart. No special form is required.

(b) The application letter must be accompanied by—

(1) A certified copy of the court order granting employee retirement benefits and/or survivor benefits;

(2) A statement that the court order has not been amended, superseded, or set aside;

(3) Identifying information concerning the employee, Member, or retiree such as his or her full name, FERS claim number, date of birth, and social security number, if available;

(4) The current mailing address of the former spouse or separated spouse; and

(5) If the employee has not retired under FERS or died, the mailing address of the employee.

(c) When payments are subject to termination upon remarriage, no payment will be made until the former spouse submits to the Associate Director a statement in the form prescribed by OPM certifying—

(1) That a remarriage has not occurred;

(2) That the former spouse will notify the Associate Director within 15 calendar days of the occurrence of any remarriage; and

(3) That the former spouse will be personally liable for any overpayment to him or her resulting from a remarriage. The Associate Director may subsequently require recertification of these statements.

§ 841.905 Amounts payable.

(a) Money held by an employing agency or OPM that may be payable at some future date is not available for payment under court orders unless all of the conditions necessary for payment of the money to the former employee or Member have been met, including, but not limited to—

(1) Separation from a covered position in the Federal service;

(2) Application for payment of the money by the former employee or Member; and

(3) The former employee's or Member's immediate entitlement to payment of the money subject to the order.

(b) Waivers of employee or Member annuity payments under the terms of 5 U.S.C. 8465(a) exclude the waived portion of the annuity from availability for payment under a court order if such waivers are postmarked or received before the date that OPM receives a qualifying court order.

(c) Payment under a court order may not exceed—

(1) In cases involving employee or Members annuities, the net annuity;

(2) In cases involving refunds of contributions, the amount of the refund; and

(3) In cases involving former spouse annuities, the amount permitted under section 8445(b) of title 5, United States Code.

(d) In cases in which court orders award former spouse annuities—

(1) Except as provided in paragraph (d)(2) of this section, former spouse annuities based on qualifying court orders will commence and terminate in accordance with the court order.

(2) A court order will not be honored to the extent it would require an annuity to commence prior to the day after the employee, Member, or retiree dies, or the first day of the second month beginning after the date on which OPM received written notice of the court order together with the additional information required by § 841.904. Further, a court order will not be honored to the extent it requires an annuity to be terminated contrary to 5 U.S.C. 8445(c)(2).

(3) A court order will not be honored to the extent it is inconsistent with any joint designation or waiver previously executed under section 8416(a) of title 5, United States Code, respect to the former spouse involved.

§ 841.906 Processing court orders dividing employee retirement benefits.

(a) Upon receipt of a court order dividing employee retirement benefits without an item of documentation required under § 841.904, the Associate Director will notify the person submitting the order of which item(s) is necessary to document the claim and that the claim cannot be processed without the missing item(s).

(b) Upon receipt of a court order dividing employee retirement benefits with all the documentation required under § 841.904, the Associate Director will review the court order to determine whether it is a qualifying court order under § 841.903 and whether the employee or Member affected by the order is receiving or entitled to receive employee retirement benefits.

(c) If the Associate Director determines that the order is not a qualifying court order, the Associate Director will send a notice to the employee and a final decision to the former spouse or separated spouse.

(1) The notice to the employee will state that OPM has received a court order from the former spouse or separated spouse but OPM has determined that the court order is not a qualifying court order.

(2) The final decision to the former spouse or separated spouse will—

(i) Acknowledge receipt of the court order;

(ii) State that the court order is not a qualifying court order and identify the paragraph(s) of § 841.903 under which the court order failed to qualify; and

(iii) State the right to appeal the decision to MSPB and the procedure and time limit for submitting an appeal.

(d) If the Associate Director determines that the court order is a qualifying court order and the employee is immediately eligible to receive employee retirement benefits, the Associate Director will send a final decision to both the employee and the former spouse or separated spouse.

(1) The final decision to the employee will state—

(i) That OPM has received a court order affecting employee retirement benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have on employee retirement benefits;

(v) How the former spouse's or separated spouse's share of retirement benefits was computed;

(vi) In cases affecting annuity payments, that the retiree's annuity will be reduced effective with benefits accruing on the first day of the second month after OPM's receipt of the required documentation;

(vii) That the order must be honored unless entitlement terminates under § 841.908; and

(viii) That the employee may appeal the decision to MSPB and the procedure and time limit for submitting an appeal.

(2) The final decision to the former spouse or separated spouse will state—

(i) That OPM has received the court order affecting employee retirement

benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse's or separated spouse's share of retirement benefits was computed;

(v) That, if the former spouse or separated spouse disagrees with the computation, he or she may appeal the decision to MSPB and the procedure and time limit for submitting an appeal;

(vi) In cases affecting annuity payments, that the former spouse's or separated spouse's share of the retiree's annuity will begin to accrue effective on the first day of the second month after OPM's receipt of the required documentation and will be paid on the first day of the month after accrual; and

(vii) The order will continue to be honored unless entitlement terminates under § 841.908.

(e) If the Associate Director determines that the court order is a qualifying court order and the employee is not immediately eligible to receive employee retirement benefits, the Associate Director will send a final decision to both the employee and the former spouse or separated spouse.

(1) The final decision to the employee will state—

(i) That OPM has received a court order affecting employee retirement benefits and the date when OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have, under current law and regulations, on future employee retirement benefits, when payable;

(v) How the former spouse's or separated spouse's share of retirement benefits would be computed under current law and regulations;

(vi) That the order must be honored unless entitlement terminates under § 841.908; and

(vii) That the employee may appeal the decision to MSPB and the procedure and time limit for submitting an appeal.

(2) The final decision to the former spouse or separated spouse will state—

(i) That OPM has received the court order affecting employee retirement benefits and the date when OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse's or separated spouse's share of retirement benefits would be computed under current law and regulations;

(v) That, if the former spouse or separated spouse disagrees with the computation, he or she may appeal the decision to MSPB and the procedure and time limit for submitting an appeal.

(vi) That, in accordance with § 841.905, nothing is payable before employee retirement benefits are payable to the employee; and

(vii) That the order will be honored when employee retirement benefits become payable unless entitlement terminates under § 841.908.

§ 841.907 Processing court orders affecting survivor annuity benefits.

(a) Upon receipt of a court order affecting survivor annuity benefits without an item of documentation required under § 841.904, the Associate Director will notify the person submitting the order of which item(s) is necessary to document the claim and that the claim cannot be processed without the missing item(s).

(b) Upon receipt of a court order affecting survivor annuity benefits with all the documentation required under § 841.904, the Associate Director will review the court order to determine whether it is a qualifying order under § 841.903, and whether the employee or Member affected by the order is receiving or entitled to receive employee retirement benefits or has died.

(c) If the Associate Director determines that the order is not a qualifying court order, the Associate Director will send a notice to the employee or survivor and a final decision to the former spouse.

(1) The notice to the employee or survivor will state that OPM has received a court order from the former spouse but OPM has determined that the court order is not a qualifying court order.

(2) The final decision to the former spouse will—

(i) Acknowledge receipt of the court order;

(ii) State that the court order is not a qualifying court order and the regulations under which the court order failed to qualify; and

(iii) State the right to appeal the decision to MSPB and the procedure and time limit for submitting an appeal.

(d) If the Associate Director determines that the court order is a qualifying court order and the employee has died, the Associate Director will send a final decision to the former spouse and any other claimant whose interest is adversely affected by the court order.

(1) The final decision to any other claimant whose interest is adversely affected by the court order will state—

(i) That OPM has received a court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have on the claimant's entitlement to benefits;

(v) That the order must be honored unless entitlement terminates under § 841.908; and

(vi) That the claimant may appeal the decision to MSPB and the procedure and time limit for submitting an appeal.

(2) The final decision to the former spouse will state—

(i) That OPM has received the court order awarding the survivor annuity benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse's survivor annuity was computed;

(v) That, if the former spouse's disagrees with the computation, he or she may appeal to MSPB and the procedure and time limit for submitting an appeal;

(vi) That the survivor annuity will begin to accrue effective on the first day of the second month after OPM's receipt of the required documentation; and

(vii) That the order will continue to be honored unless entitlement terminates under § 841.908.

(e) If the Associate Director determines that the court order is a qualifying court order and the employee is alive and receiving a retirement annuity, the Associate Director will send a final decision to both the retiree and the former spouse.

(1) The final decision to the retiree will state—

(i) That OPM has received a court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have on annuity benefits and survivor election;

(v) How the amount of reduction to provide the former spouse annuity benefit was computed;

(vi) That the reduction will be effective on the first day of the second month after receipt of the documentation required by § 841.904;

(vii) That the order must be honored unless entitlement terminates under § 841.908; and

(viii) That the employee may appeal the decision to MSPB and the procedure and time limit for submitting an appeal.

(2) The final decision to the former spouse will state—

(i) That OPM has received the court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse annuity benefit will be computed;

(v) That, if the former spouse disagrees with the computation, he or she may appeal to MSPB and the procedure and time limit for submitting an appeal;

(vi) That nothing is payable before the death of the retiree; and

(vii) That the order will be honored unless entitlement terminates under § 841.908.

(f) If the Associate Director determines that the court order is a qualifying court order and the employee has not retired, the Associate Director will send a final decision to both the employee and the former spouse.

(1) The final decision to the employee will state—

(i) That OPM has received a court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have, under current law and regulations, on future annuity benefits, when payable;

(v) How the reduction in future annuity benefits would be computed under current law and regulations;

(vi) That the order must be honored unless entitlement terminates under § 841.908; and

(vii) That the employee may appeal the decision to MSPB and the procedure and time limit for submitting an appeal.

(2) The final decision to the former spouse will state—

(i) That OPM has received the court order awarding survivor benefits and the date that OPM received the documentation required by § 841.904;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse's survivor annuity benefits would be computed under current law and regulations;

(v) That, if the former spouse disagrees with the computation, he or she may appeal to MSPB and the procedure and time limit for submitting an appeal;

(vi) That nothing is payable before the death of the employee; and

(vii) That the order will be honored when the employee dies unless entitlement terminates under § 841.908.

§ 841.908 Termination of former spouse or separated spouse benefits.

(a) OPM will terminate a recurring payment of or a future interest in employee retirement benefits to a former spouse or separated spouse whenever—

(1) The retiree dies;

(2) A contemporaneous or subsequent court order supersedes or sets aside the qualifying court order or directs that OPM stop the payments; or

(3) Termination is required by the terms of the court order awarding benefits to the former spouse or separated spouse.

(b) OPM will terminate a recurring payment of or a future interest in survivor annuity benefits to a former spouse whenever—

(1) The former spouse dies;

(2) The former spouse remarries before attaining age 55;

(3) A contemporaneous or subsequent court order determines that the qualifying court order awarding the survivor annuity benefits is invalid; or

(4) Termination is required by the terms of the court order awarding benefits to the former spouse.

(c) OPM will honor a qualifying court order that appears valid on its face despite a pending appeal or other attack on the validity of the qualifying court order unless the original or reviewing court has issued a stay of the qualifying court order or has ordered OPM not to honor the qualifying court order pending the appellate or collateral review. Automatic stays under state law will not be honored unless the original or reviewing court issues a document suspending the effect of the qualifying court order pending the review of the qualifying court order.

§ 841.909 Court orders preventing payment of refunds of contributions.

(a) Payment of a refund of contributions to a former employee will be subject to the terms of any court order issued with respect to any former spouse or separated spouse, if—

(1) The court order expressly relates to any portion of the refund involved; and

(2) Payment of the refund would extinguish entitlement of the former spouse to a survivor annuity under section 8445 of title 5, United States Code, or the former spouse or separated spouse to any portion of an annuity under section 8467 of title 5, United States Code.

(b) For paragraph (a) of this section to have effect, OPM must be in receipt of the court order before authorizing payment of the refund.

(c)(1) In the event that OPM receives two or more court orders—

(i) When there are two former spouses, or a former spouse and a separated spouse, the court orders will be honored in the order in which they were issued until the contributions have been exhausted.

(ii) When there are two or more court orders or decrees relating to the same former spouse or separated spouse, the one issued last will be honored first.

(2) In no event will the amount paid out exceed the amount of the refund.

(d) OPM is not liable for any payment made from money due from or payable by OPM to any individual pursuant to a court order that is regular on its face, if such payment is made in accordance with this subpart.

§ 841.910 Effective dates.

(a) Except as provided in § 841.903(d), provisions of this subpart apply regardless of the date of issuance of the

court order or the date when the employee or Member retires.

(b)(1) The Associate Director will not increase the amount apportioned from current retirement benefits to satisfy an arrearage due the former spouse or separated spouse unless the court order states the amount of the arrearage and directs that it be paid from the employee retirement benefits. However, the Associate Director will honor the terms of a new or revised court order that either increases or decreases the former spouse's or separated spouse's entitlement. These changes will be prospective only.

(2) Benefits payable to a former spouse or separated spouse from a retiree's annuity begin to accrue no earlier than the first day of the second month after OPM's receipt of a qualifying court order and the documentation required by § 841.904, and terminate no later than the last day of the month before the death of the retiree.

(c) The survivor annuity for a former spouse commences and terminates in accordance with the court order. However, a court order will not be honored to the extent it would require an annuity to commence before—

(1) The day after the employee, Member, or retiree dies; or

(2) The first day of the second month beginning after OPM receives the court order, together with such additional information required by § 841.904, whichever is later.

Further, a court order will not be honored to the extent it requires an annuity to be terminated contrary to section 8445(c) of title 5, United States Code.

§ 841.911 Payment only to former spouses and separated spouses.

(a) Payments under this subpart may only be made to a former spouse, a separated spouse, or the representative of a former or separated spouse.

(b) No payment under this subpart may be made after the death of the former spouse or separated spouse.

(c) Upon the death of a former spouse or separated spouse receiving a portion of employee retirement benefits under this subpart, the former spouse's or separated spouse's share will revert to the retiree unless it is needed to comply with another qualifying court order awarding benefits to a living former spouse or separated spouse.

§ 841.912 Limitations.

(a) In honoring and complying with a court order, the Associate Director will not disrupt the scheduled method of accruing retirement benefits or the normal timing for making such payment, despite the existence in the order of a special schedule of accrual or payment of amounts due the former spouse or separated spouse.

(b) Payments from employee retirement benefits under this subpart will be discontinued whenever the retiree's annuity payments are suspended or terminated. If annuity payments to the retiree are restored, payment to the former spouse or separated spouse will also resume.

(c) Because the former spouse or separated spouse is entitled to payments from employee retirement benefits only while the former employee or Member is living, the former spouse or separated spouse is personally liable for any payments from employee retirement benefits received after the death of the retiree.

§ 841.913 Guidelines on interpreting court orders.

As circumstances require, OPM will publish in the **Federal Register** a notice of the guidelines it uses in interpreting court orders.

§ 841.914 Liability.

OPM is not liable for any payment made from employee retirement benefits pursuant to a court order if such payment is made in accordance with the provisions of this subpart.

§ 841.915 Receipt of multiple court orders.

Except as provided in § 841.909, in the event that OPM received two or more qualifying court orders—

(a) When there are two or more former spouses, or a former spouse and a separated spouse, the court orders will be honored in the order in which they were issued to the maximum extent possible under section 8445(b) of title 5, United States Code, and § 841.905.

(b) When there are two or more court orders relating to the same former spouse or separated spouse, the one issued last will be honored.

§ 841.916 Cost-of-living adjustments.

In cases when the court order apportions a percentage of the employee retirement benefit, the Associate Director will initially determine the amount of proper payment. That amount will be increased by future cost-of-living increases payable to the retiree unless the court order directs otherwise.

Appendix A to Subpart I of Part 841—Guidelines for Interpreting State Court Orders Dividing Employee Retirement Benefits

These guidelines explain the interpretation which the Office of Personnel Management (OPM) will place on terms and phrases frequently used in dividing benefits. These guidelines are intended not only for the use of OPM, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Cost-of-Living and Salary Adjustments

A. Unless the court directly and unequivocally orders otherwise, decrees which divide annuities either on a percentage basis or by use of a formula will be interpreted as subject to adjustment for cost-of-living and salary adjustments occurring after the issuance of the decree.

B. On the other hand, decrees which award a former spouse or a separated spouse a specific dollar amount from the annuity will be interpreted as excluding cost-of-living and salary adjustments unless the court expressly orders their inclusion.

C. Orders which contain both a formula or percentage instruction and a corresponding fixed dollar amount will be interpreted as including the fixed amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction will control in cases where conflicting instructions appear.

D. A formula containing an instruction to calculate the former spouse's or separated spouse's share effective at the time of divorce or separation will not be interpreted to prevent cost-of-living or salary adjustments. To award a fixed dollar amount based on the rate of annuity which would have been paid if retirement occurred at the date of divorce, the decree must either state the dollar amount of the award or explain with sufficient clarity that salary adjustments, as well as service, after the date of the decree are to be disregarded in computing the former spouse's or separated spouse's share.

II. Types of Annuity

A. Gross annuity will be interpreted as the amount of the annuity payable after any applicable survivor reduction but before any other deduction.

B. To divide an annuity before any applicable survivor deduction the decree must contain language to the effect that the division is to be made on the self-only annuity, the life rate annuity, or the annuity unreduced for survivor benefit, or equivalent language. A division of "gross annuity" will not accomplish this purpose.

C. Net annuity or disposable annuity will be interpreted to mean net annuity as defined in § 841.902.

D. Orders which fail to state the type of annuity which they are dividing will be interpreted as dividing gross annuity (defined above).

III. Calculating Time

A. The smallest unit of time which will be used in computing a formula in a decree is a month.

1. This policy is based on the provision of section 8411(a)(1) of title 5, United States Code, which allows credit for service for years or twelfth parts thereof. Requests to

calculate smaller units of time will not be honored.

2. Smaller periods of time stated in terms of decimal fractions of a year contained in a decree will be limited in application to simple numerical operations performed using the extra precise number. Time calculations by the Office of Personnel Management will be no more precise than years and twelfth parts. For example, the share of a former spouse awarded a portion of the annuity equal to ½ of the fraction whose numerator is 12.863 years and whose denominator is the total service on which the annuity is based would be computed by taking ½ of the quotient obtained by dividing 12.863 by the total service measure in years and twelfth parts.

B. The term "military service" will generally be interpreted to include only periods of service within the definition of military service contained in section 8401(31) of title 5, United States Code, i.e., active duty military service. Civilian service with military organizations will not be included as "military service," except where the exclusion of such civilian service would be manifestly contrary to the intent of the court order.

C. When a decree contains a formula for dividing annuity which requires computation of service and unused sick leave has been used in the annuity computation (i.e., benefits under Part 845 of this chapter), the amount of credit attributable to the unused sick leave will be computed as service if the formula instructs the use of "creditable service" (or other phrase using "credit" or its equivalent), but will exclude the time attributable to unused sick leave if the formula is based on "years of service" or "total service." Credit for unused sick leave always accrues on the date of separation for immediate retirement; it is never apportioned over the time when earned.

IV. Distinguishing Between Divisions of Annuity and Refund of Contributions

A. Orders which are unclear about whether they are dividing an annuity or a refund of contributions will be interpreted as dividing an annuity.

B. Orders using "annuities," "pensions," "retirement benefits," or similar terms will be interpreted as dividing an annuity and whatever other employee benefits become payable, such as refunds. Orders which divide "contributions," "deductions," "deposits," "retirement accounts," "retirement fund," or similar terms will be limited to division of the amount which the employee has paid into the Civil Service Retirement Fund.

Appendix B to Subpart I of Part 841—Guidelines for Interpreting State Court Orders Awarding Survivor Annuity Benefits to Former Spouses

These guidelines explain the interpretation which the Office of Personnel Management (OPM) will place on terms and phrases frequently used in awarding survivor benefits. These guidelines are intended not only for the use of OPM, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Insurable Interest Annuities

Two types of potential survivor annuities may be provided by retiring employees to cover former spouses. Sections 8417 and 8445 of title 5, United States Code, provides for "former spouse annuities." Sections 8420 and 8444 of title 5, United States Code, provide for "insurable interest annuities." These are distinct benefits, each with its own advantages.

A. OPM will enforce State court orders to provide section 8417 reductions or section 8445 annuities. These annuities are less expensive and have fewer restrictions than insurable interest annuities but the former spouse's interest will automatically terminate upon remarriage before age 55. To provide a section 8417 reduction or section 8445 annuity, the order must use terms such as "former spouse annuity," "section 8417 reduction," "section 8445 annuity," or "survivor annuity."

B. OPM will not enforce State court orders to provide "insurable interest annuities" under section 8420 or 8444. These annuities may only be elected at the time of retirement by a retiring employee who is not retiring under the disability provision of the law and who is in good health. The election may also be eliminated to provide a survivor annuity for a spouse acquired after retirement. The parties might seek to provide this type of annuity interest if the non-employee spouse expects to remarry before age 55, if the employee expects to remarry a younger second spouse before retirement, or if another former spouse has already been awarded a section 8445 annuity. However, the State court will have to provide its own remedy if the employee is not eligible for or does not make the election. OPM will not enforce the order. Language including the words "insurable interest" or referring to section 8420 or 8444 will be interpreted as providing for this type of survivor benefit.

C. In orders which contain internal contradictions about the type of annuity, such as "insurable interest annuity under section 8445," the section reference will control.

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BILLING CODE 6325-01-M

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5 CFR Part 842

Federal Employees Retirement System—Basic Annuity; Coverage

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comments on the rules governing employee coverage under the Federal Employees' Retirement System (FERS) Act of 1986. These regulations are necessary to implement the Act. They will identify those employees who are covered by statute, excluded by statute, and excluded by OPM.

DATES: Interim rules effective January 1, 1987; comments must be received on or before March 2, 1987.

ADDRESS: Send comments to Frank D. Titus; Director, FERS Implementation Task Force; Retirement and Insurance Group; P.O. Box 884, Washington, DC 20044; or deliver to OPM, Room 3311, 1900 E Street NW.; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Sugar, (202) 632-5560.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99-335, created a new retirement system for many Federal employees. Employees who are covered by FERS will be covered by the basic retirement benefit, social security, and the thrift savings plan. OPM is responsible for administration of the basic retirement benefits. Social security benefits are administered by the Social Security Administration. The savings plan is administered by the Federal Retirement Thrift Investment Board. The basic retirement benefit of FERS becomes effective on January 1, 1987. To implement the basic retirement provisions on time, as well as to provide authoritative information about FERS for the "open season" materials for employees who can elect FERS coverage in 1987, OPM will be publishing a series of interim regulations in the near future. This regulation on employee coverage is one of the first in this series and is Subpart A of Part 842—Basic Annuity. The remaining subparts of Part 842 will address other basic annuity requirements including eligibility, computation, the special annuity supplement, and special provisions for certain employees.

Part 841 will address general administration under the FERS including normal cost computations for agency contributions. Part 843 will address survivor and lump-sum benefits. Part 844 will address disability benefits and Part 846 will address elections by employees to be covered under FERS.

Section 842.101 states the purpose of this regulation which is to identify the employees who are covered by statute, excluded by statute, and excluded by OPM.

Section 842.102 provides the definitions applicable to this subpart. The definitions of "employee" and "Member" are those contained in section 8401 of title 5, United States Code. They are included for the convenience of the reader. It should be

noted that employees of the Postal Service and the Postal Rate Commission are included by an amendment in section 306 of the FERS Act to title 39, United States Code.

Section 842.103 states the general rules for coverage under FERS. First, one must meet the definition of employee or Member, or specifically be covered by another provision of law. Second, because social security coverage is a major part of the FERS benefit package, one must be covered by social security. Third, employee deductions must be withheld from pay and the agency contributions must be made. Fourth, employees must be paid based on units of time. This provision is necessary to determine how much service an employee has. It has the impact of excluding piece workers who do not have a pre-established work schedule. (These individuals are currently excluded under the Civil Service Retirement System (CSRS) regulations in Part 831 of this chapter.)

Section 842.104 states the basic rules for variations and exceptions to automatic coverage under FERS. In enacting FERS, Congress essentially provided that all employees who have entitlement to a benefit under CSRS (i.e., 5 years of civilian service) have a choice of whether to stay under CSRS or to elect FERS coverage during the open season from July 1 through December 31, 1987. Employees now covered by CSRS interim provisions (with 1.3% retirement deductions and social security deductions) who have, as of December 31, 1986, less than 5 years of creditable civilian service and thus no entitlement to a CSRS benefit will be automatically covered by FERS. (Creditable civilian service includes service for which no retirement deductions were withheld and service for which deductions were refunded.)

Paragraph (a) of this section addresses reemployment under FERS. The annuity of a FERS retiree stops upon reemployment. He or she is then covered by FERS while reemployed unless reemployment is as a justice or judge (as defined in 28 U.S.C. 451) or is as an employee subject to another retirement system for Federal employees. When the period of reemployment ends, the annuity will be recomputed. Future regulations will cover reemployment in more detail.

Paragraph (b) of this section addresses employees with 5 or more years of service as of December 31, 1986, who are covered by CSRS and social security.

Paragraph (c) of this section states the options provided by law for employees who are rehired after January 1, 1987. It parallels the rule described above that permits individuals who complete 5 years of creditable civilian service, some of which was covered by CSRS or Foreign Service deductions, and who then are employed in a position covered by CSRS and FERS to have a choice of CSRS coverage offset by social security benefits or FERS.

Paragraph (d) of this section pertains to the opportunity of certain high-level officials to elect FERS coverage.

Paragraph (e) of this section addresses employees covered only by CSRS who may elect FERS. Agencies should note that the 5-year rule cited above does not apply to employees who are under "regular" CSRS deductions (normally 7%). An employee who was hired before 1984 who has only CSRS coverage remains covered only by CSRS, regardless of length of service, unless he/she elects FERS.

Paragraph (f) specifies that employees who have 5 or more years of creditable civilian service even though none of this service was covered by CSRS deductions or it was not covered by deductions on December 31, 1986, are not covered by FERS unless they elect this coverage. If FERS coverage is not elected, the employee remains under only social security coverage.

Section 842.105 contains the regulatory exclusions under OPM's discretionary authority to exclude temporary and intermittent employees. Under this authority, OPM is excluding employees who are serving under appointments limited to 1 year or less, and intermittent employees unless they are serving under career or career conditional appointments.

However, when final regulations are published, OPM intends to extend coverage to employees serving under temporary appointments limited to 1 year or less, provided they have 1 year of current continuous service in the same agency. Those with 1 year of current continuous service in the same agency would be able to acquire retirement coverage after the first year of current continuous service. We are not extending coverage to such "temporary" employees at this time because such a change could possibly have a significant impact on agencies and it is not necessary to implement this aspect of FERS on January 1. However, for the reasons stated below, we believe that FERS coverage should be extended to this new class of employees when the final rules are published. Consequently, we are requesting comments on the intended extension of coverage at this time.

Unlike CSRS, two of the three components of the FERS benefit, (social security and employee savings and matching Government contributions), are completely portable—they go with the employee to any employer. The basic benefit, while not fully portable, provides deferred benefits as early as age 55 with 10 years of service, disability and death benefits after only 18 months of service, and requires a very nominal employee contribution. Although FERS allows deposits for service performed before 1989, FERS will not allow employees to gain credit for non-covered employment occurring after 1988.

OPM believes the portability of FERS benefits, combined with the absence of any mechanism for obtaining credit for non-covered employment, makes FERS coverage appropriate for certain positions traditionally excluded from CSRS by regulation. Important disability protection will be provided under FERS in instances where the CSRS would have provided none had it covered the positions. In instances where an individual's employment is truly short term, overall Government costs will be minimized by the 5-year vesting requirement for retirement benefits other than death and disability and the 2- to 3-year vesting requirement for the automatic 1 percent Government contribution to a FERS employee's savings account.

Waiver of Notice of Proposed Rulemaking

Under 5 U.S.C. 553 (b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making these regulations effective in less than 30 days. FERS is effective January 1, 1987. The volume of regulations necessary to implement the entire new retirement system and the need to have those regulations well in advance of the statutory effective date so that employees who will be covered by the system on January 1 can be accurately identified and all necessary preparations that are vital to the smooth operation of this new retirement system can be done.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement coverage of Federal employees.

List of Subjects in 5 CFR Part 842

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Title 5 of the Code of Federal Regulations to add Part 842 to read as follows:

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

Subpart A—Coverage

Sec.

842.101 Purpose.
842.102 Definitions.
842.103 General.
842.104 Exceptions and options.
842.105 Regulatory exclusions.

Subpart A—Coverage

Authority: 5 U.S.C. 8461; Section 842.106 also issued under 5 U.S.C. 8402(c)(1).

§ 842.101 Purpose.

This subpart restates the statutory provisions on coverage under the Federal Employees Retirement System (FERS) and contains regulatory exclusions.

§ 842.102 Definitions.

In this subpart—

"CSRS" means the Civil Service Retirement System as described in subchapter III of chapter 83 of title 5, United States Code;

"Employee" means the following individuals listed in 5 U.S.C. 8401(11) whose service is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1954:

(a) An employee as defined by 5 U.S.C. 2105;

(b) A U.S. Commissioner whose total pay for services performed as Commissioner is not less than $3,000 in each of the last three consecutive calendar years ending after December 31, 1954;

(c) An individual employed by a county committee established under 16 U.S.C. 590h(b);

(d) An individual employed by Gallaudet College;

(e) An individual appointed to a position on the office staff of a former President under section 1(b) of the "Act of August 25, 1958" (72 Stat 838);

(f) An alien (1) who was previously employed by the Government; (2) who is employed full time by a foreign government to protect or further the interests of the United States during an interruption of diplomatic or consular relations; and (3) for whose services reimbursement is made to the foreign government by the United States;

(g) A Congressional employee as defined in 5 U.S.C. 2107, including a temporary Congressional employee and an employee of the Congressional Budget Office; and

(h) The following individuals are excluded from the definition of "employee" in 5 U.S.C. 8401 (11):

(1) A justice or judge of the United States as defined by 28 U.S.C. 451;

(2) A temporary employee of the Administrative Office of the United States Courts or of a court named by 28 U.S.C. 610;

(3) A construction employee or other temporary, part-time, or intermittent employee of the Tennessee Valley Authority;

(4) A student employee as defined by 5 U.S.C. 5351;

(5) Teachers in dependents' schools of the Department of Defense in overseas areas, notwithstanding the nature of any employment during a recess period between two school years;

(6) An individual subject to another retirement system for Government employees (other than an employee of the United States Park Police, or the United States Secret Service) any of whose civilian employment after December 31, 1983, is employment subject to social security; and

(7) An individual excluded by OPM regulation in Section 842.105.

"FERS" means the Federal Employees Retirement System as described in chapter 84 of title 5, United States Code.

"Member" has the same meaning provided in 5 U.S.C. 2106, except that the term does not include an individual who irrevocably elects, by written notice to the official by whom such individual is paid, not to participate in FERS.

"OPM" means the Office of Personnel Management.

"Social security" means coverage under the Old Age, Survivors, and Disability Insurance (OASDI) programs of the Social Security Act.

§ 842.103 General.

To be covered under FERS, an individual must:

(a) Be an employee, Member, or specifically covered by another provision of law;

(b) Be covered by social security;

(c) Have retirement deductions withheld from pay and have agency contributions made; and

(d) Be paid based on units of time.

Except as provided in Section 842.104 and as excluded by Section 842.105, an employee or Member is covered by FERS.

§ 842.104 Exceptions and options.

(a) A FERS retiree who is reemployed is covered by FERS unless the reemployment service is as a justice or judge of the United States (as defined by 28 U.S.C. 451) or as an employee subject to another retirement system for Federal employees.

(b) An employee who is covered by CSRS and social security and who has 5 or more years of creditable civilian service under CSRS rules as of December 31, 1986, is subject to FERS only after electing FERS coverage.

(c) An employee who is covered by CSRS and social security and who completes 5 or more years of creditable civilian service under CSRS rules at the time of his or her last separation, and had some service covered by CSRS or the Foreign Service System, is subject to FERS only after electing FERS coverage.

(d) An individual who has served continuously (i.e., without a break in service of more than 365 days) since December 31, 1983, in one or more of the following positions is subject to FERS only after electing FERS coverage.

(1) The Vice President;

(2) A Member of Congress;

(3) A non-SES appointee to a position listed in 5 U.S.C. 5312 through 5317;

(4) A Senior Executive Service or Senior Foreign Service noncareer appointee; or

(5) An individual appointed by the President (or his designee) or the Vice President under section 105(a)(1), 107 (a)(1), or (b)(1) of title 3, United States Code, to a position for which the maximum rate of basic pay is at or above the rate for Level V of the Executive Schedule.

(e) An employee who is covered only by CSRS is subject to FERS coverage only after electing FERS coverage.

(f) An employee who has 5 or more years of creditable civilian service under CSRS rules as of December 31, 1986, even though none of this service was covered by CSRS deductions or it was not covered by deductions on December 31, 1986, is subject to FERS only after electing FERS coverage.

§ 842.105 Regulatory exclusions.

(a) OPM is authorized in 5 U.S.C. 8402(c)(1) to "exclude from the operation of this chapter an employee or group of employees in or under an Executive agency, the United States Postal Service, or the Postal Rate Commission, whose

employment is temporary or intermittent, except an employee whose employment is part-time career employment (as defined in section 3401(2))." Therefore, under this authority, OPM is excluding the following:

(1) Employees serving under appointments limited to 1 year or less; and

(2) Intermittent employees serving under other than career or career conditional appointments.

(b) When an employee who is covered by FERS moves to a position listed in paragraph (a) of this section without a break in service or after a separation of 3 days or less, his or her FERS coverage will continue.

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 436

[Docket No. 3911S]

Tobacco (Guaranteed Production Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (2) provide for insurance coverage by type; (3) extend the end of the insurance period for certain types of tobacco; (4) change the method of calculating total production to count; (5) provide for use of a proportional value on damaged tobacco in adjusting for quality without determination of a price factor; (6) add a definition for "Average value per pound"; and (7) redefine the "Market price" definition. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 31, 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 these regulations is July 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 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.

Our current policy and loss adjustment procedure provides that any appraised production damaged by insurable causes can be adjusted for quality. This adjustment is determined through the adjuster's estimation of the proportional value of the damaged tobacco to the value of undamaged tobacco.

Once the proportional relationship is established, conversion to a price for comparison to the price of undamaged tobacco is required. The prices are then adjusted to appraised production to count through the automated indemnity calculation process using the price factor determined from the prices. A major reason for this complex process is to assure the mathematical accuracy of the price factor by removing the calculation from the adjuster's responsibility.

To simplify this process, FCIC has determined that the proportional relationship will be used without the determination of a price factor. Under this approach, the adjuster will continue to establish the appraised production (gross pounds) of unharvested marketable tobacco without regard to quality. The proportional value of the unharvested marketable tobacco, as a percentage of the value of undamaged unharvested tobacco, is then determined. This percentage (not to exceed 100 percent) is multiplied by the appraised production. The result will be appraised production to count against the production guarantee.

The advantages to this approach are:

1. The insured knows the final amount of appraised production to count when the claim is completed.

2. The quality adjustment process is easier to understand because it is no longer necessary to establish a price for unharvested tobacco (in an uncured condition) using a pricing system for harvested tobacco (in a cured or semi-cured condition).

3. Automated claims processing is simplified with the elimination of the adjustment for quality for appraised production from the computer system.

4. Claims preparation is simplified because fewer entries are required on the claim.

All quality of appraised production will be determined in accordance with this procedure.

Other than minor changes in language and format, the other principal changes in the Tobacco (Guaranteed Production Plan) policy are:

1. *Section 2*—Revise to allow insurance coverage by types of tobacco thereby permitting insureds to produce other types of tobacco which they may not wish to insure. The different types of tobacco are sufficiently distinguished to prevent production crossover.

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.

2. *Section 4b*—Remove. The reduction in production guarantee provision for unharvested acreage is contained in section 9.e.(3)(c).

3. *Section 7*—Change the end of the insurance period date for certain types of tobacco.

4. *Section 9*—Change the method of calculating total production to count by using an average value for the entire

unit as opposed to separate loads or sales.

5. *Section 17*—Add a definition for "Average value per pound" to clarify its use in Section 9. Delete (1)(b) and (2)(a), and redesignate the remaining subsections accordingly. Amend the "Market price" definition to permit the the use of the "average price support" for specific types of tobacco and an alternate "season average price" when a price support is not in effect. The use of the "average price support" was the basis on which these types of tobacco were adjusted under the previous dollar plan of insurance. Its continued use will provide for an accurate and more easily administered loss adjustment procedure.

On Monday, October 20, 1986, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 51 FR 37186, proposing to revise and reissue the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations, effective for the 1987 and succeeding crop years to include the changes outlined above.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule. One comment was received from the National Association of Crop Insurance Agents (NACIA) which, while not directly addressing the proposed amendments to the tobacco crop insurance policy, did request reconsideration of unit guidelines for tobacco because NACIA feels that the unit guidelines, as presently constituted in 7 CFR Part 436, impose a unique hardship on landlords.

NACIA advises that differences may arise between a landlord's insurable unit and the insurable unit of a tenant under the present unit guidelines which require that all of the tobacco acreage for an insured identified by a single farm ASCS number be included in a single unit. Since ASCS farm numbers are constituted by operator, a farm owned by one landlord may have several insured tenants, each with a single unit while the landlord must be insured on a single unit. Since there is a perceived advantage to having a large number of small units for loss adjustment purposes, NACIA argues that the landlords are effectively discriminated against.

The present method of unit determination under this tobacco policy was adopted after high loss ratios were experienced during the 70's and 80's. Field hearings on unit division were held during 1985 and the Corporation is presently studying the entire unit division question from a policy as well as an actuarial position. The Corporation does not believe that enough information has been provided the Corporation to make the change requested by NACIA at this time and only in this policy. This is especially true since this change was not in the proposed rule and has not had the benefit of public notice and comment.

Although the claim is made that the requested change would be for the benefit of the insured and therefore does not require notice and comment, the Corporation notes that the change could lead to adverse loss experience which does affect the insured directly in the manner of premium increase. The change could also adversely affect the loss experience of the reinsured companies. The Corporation has therefore determined to leave the unit division rules in the guaranteed tobacco policy as they were for the 1986 crop year.

In reviewing these regulations, FCIC has determined that two types of tobacco grown in Ohio were inadvertently omitted from the list of insurable tobacco types in Section 2 of the Policy. These are Types 42 and 44 Cigar Filler tobacco. These tobacco types are included in the regulations outlined below.

With the addition of Types 42 and 44 to the list of insurable tobacco types, the proposed regulations, as published at 51 FR 37186, are hereby adopted as final.

Since the policy provisions contained in 7 CFR Part 436 must be filed by December 31, 1986, to be effective for the 1987 crop year, good cause exists for making this rule effective December 31, 1986.

List of Subjects in 7 CFR Part 436

Crop insurance, Tobacco (Guaranteed Production Plan).

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 revises and reissues the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1987 and succeeding crop years, to read as follows:

PART 436—TOBACCO (GUARANTEED PRODUCTION PLAN) CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.

436.1 Availability of the guaranteed plan of tobacco crop insurance.
436.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
436.3 OMB control numbers.
436.4 Creditors.
436.5 Good faith reliance on misrepresentation.
436.6 The contract.
436.7 The application and policy.

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

§ 436.1 Availability of the guaranteed plan of tobacco crop insurance.

Insurance shall be offered under the provisions of this subpart on tobacco 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.

§ 436.2 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 tobacco 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.

§ 436.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 436.4 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.

§ 436.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the tobacco 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 person 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 would 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.

§ 436.6 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 tobacco 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.

§ 436.7 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 tobacco 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 tobacco 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 Tobacco (Guaranteed Production Plan) Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Guaranteed Production Plan of Tobacco—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) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(7).

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 tobacco farming practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) The failure to follow recognized good tobacco 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 of the following tobacco types which you elect, which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table:

Flue Cured

Type 11A
Type 11B
Type 12
Type 13
Type 14

Fire Cured

Type 21
Type 22
Type 23

Burley

Type 31

Maryland

Type 32

Dark Air

Type 35
Type 36
Type 37

Cigar Filler

Type 41
Type 42
Type 44

Cigar Binder

Type 51
Type 52
Type 54
Type 55

Cigar Wrapper

Type 61

b. The acreage insured for each crop year will be tobacco planted on insurable acreage as designated by the actuarial 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 tobacco at the time of planting. 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) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) On which the tobacco was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(3) Which is destroyed, it is practical to replant to tobacco, and such acreage is not replanted;

(4) Initially planted after the final planting date set by the actuarial table unless you agree, in writing, on our form to coverage reduction;

(5) Planted to tobacco of a discount variety under the provisions of the tobacco price support program;

(6) Planted to a type or variety of tobacco not established as adapted to the area or excluded by the actuarial table;

(7) Designated as uninsurable by the actuarial table; or

(8) Planted for experimental purposes.

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 of planting, to carry out a good tobacco 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 planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of insurable types of tobacco in the county in which you have a share;

b. The practice; and

c. Your share on the date of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tobacco planted 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, production, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date for submitting applications for the crop year as established by the actuarial table.

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 percent 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 at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-fourth 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.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the tobacco policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

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 when the tobacco is planted and ends at the earliest of:

a. Total destruction of the tobacco;

b. Weighing-in at the tobacco warehouse;

c. Removal of the tobacco from the unit (except for curing, grading, packing, or immediate delivery to the tobacco warehouse);

d. Final adjustment of a loss; or

e. The following dates immediately after the normal harvest period:

(1) Types 11 and 12	November 30
(2) Type 13	October 31.
(3) Type 14	October 15.
(4) Type 36	February 28.
(5) Types 21, 31, 35 and 37	March 15.
(6) Types 22 and 23	April 15.
(7) Type 32	May 15.
(8) All other types	April 30.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tobacco on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tobacco and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) For any unit of tobacco other than types 11, 12, 13, or 14, if probable loss is determined within 15 days prior to or during harvest, immediate notice must be given and a representative sample of the unharvested tobacco (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) Notice must be given immediately if any insured tobacco is destroyed or damaged by fire during the insurance period.

(5) If tobacco is not to be sold through auction warehouses and an indemnity is to be claimed, notice must be given to allow us 5 days to inspect the cured tobacco prior to its sale or other disposition.

(6) For any unit of tobacco of type 11, 12, 13, or 14 on which an indemnity is to be claimed and the tobacco stalks are to be destroyed, notice of loss must be given to us upon completion of harvest. The tobacco stalks must not be destroyed until we give consent.

(7) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) The date marketing or other disposal of the insured tobacco is completed on the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the tobacco which is 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 on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tobacco on the unit;

(2) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tobacco 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 tobacco 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 the 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 pounds) to be counted for a unit will include all harvested and appraised production.

(1) Harvested production which, due to insurable causes, has a value less than the market price for tobacco of the same type, will be adjusted by:

(a) Dividing the average value per pound of the harvested production by the recognized market price per pound; and

(b) Multiplying that product by the number of pounds of such damaged harvested tobacco.

(2) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be given the opportunity:

(a) To inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of; and

(b) At our option to obtain additional offers on your behalf.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or put to another use without our prior written consent; and

(c) Not less than 35 percent of the production guarantee per acre for all other unharvested acreage.

(4) We may make an appraisal of not less than the guarantee per acre for any acreage of tobacco type 11, 12, 13, or 14 on which the stalks have been destroyed prior to our consent.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(6) The amount of production of any unharvested tobacco may be determined on the basis of field appraisals conducted after the end of the normal harvest period.

(7) If you elect to exclude hail and fire as insured causes of loss and the tobacco is 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.

i. We have a policy of paying your indemnity 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 indemnity 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 the tobacco is planted 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 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 two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all tobacco produced on each unit, including separate records showing the same information 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:

State and County	Cancellation and termination dates
Alabama; Florida; Georgia; Surry, Wilkes, Caldwell, Burke, and Cleveland Counties, North Carolina and all North Carolina counties east thereof; and South Carolina.	March 31.
All other North Carolina counties and all other States.	April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an 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 3 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 December 31 preceding the cancellation 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 guaranteed tobacco 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 tobacco insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "Average value per pound" means the total value of all harvested production from the unit divided by the harvested pounds.

d. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by an ASCS farm serial number for the county but physically located in another county within the state.

e. "Crop year" means the period within which the tobacco is normally grown and is designated by the calendar year in which the tobacco is normally harvested.

f. "Harvest" means the completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the production guarantee per acre shown by the actuarial table is cut or primed.

g. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

h. "Insured" means the person who submitted the application accepted by us.

i. "Loss ratio" means the ratio of indemnity to premium.

j. "Market price":

(1) For types 11, 12, 13, 14, 21, 22, 23, 31, 35, 36, 37, 42, 44, 54, and 55, means the average price support level per pound for the insured type of tobacco as announced by the United States Department of Agriculture under the tobacco price support program. [If for any crop year a price support for the insured type is not in effect, we will use the season average price in the belt or area through the day tobacco sales are completed on any unit or part thereof which is harvested]; and

(2) For types 32, 41, 51, 52, and 61, means the season average price for the applicable type of tobacco. (Such price will be the season average price for the current crop year for any unit or part thereof which is harvested).

k. "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.

l. "Planting" means transplanting the tobacco plant from the bed to the field.

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. "Tenant" means a person who rents land from another person for a share of the tobacco or a share of the proceeds therefrom.

o. "Unit" means all insurable acreage of an insurable type of tobacco in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS farm serial number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated 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 November 17, 1986.

Edward Hews,

Deputy Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-29388 Filed 12-30-86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Naval Orange Regulation 640, Amdt. 1]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 640, Amendment 1, increases the quantity of such navel oranges that may be shipped during the period December 26, 1986, through January 1, 1987.

Such action is needed to balance the supply of fresh navel oranges with the demand for such period, due to the marketing situation confronting the orange industry.

DATE: Regulation 640, Amendment 1 (§ 907.940) is effective for the period December 26, 1986, through January 1, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202-475-3914.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 Secretary's Memorandum 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 action 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 behalf. Thus, both statutes have small entity orientation and compatibility.

This amendment is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of Calfiornia. 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 Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1986-87 adopted by the Navel Orange Administrative Committee. The committee conducted a telephone vote on December 24, 1986, to consider the current and prospective conditions of supply and demand and

recommended, by a vote of 6 to 5, a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges has improved, and, therefore, the amendment is needed because the current allotment is inadequate to meet navel orange demand.

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 of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the Act. To effectuate the declared purposes of the Act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects In 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

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

2. Section 907.940 Navel Orange Regulation 640 is revised to read as follows:

§ 907.940 Navel Orange Regulation 640.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 26, 1986, through January 1, 1986, are established as follows:

(a) District 1: 744,000 cartons;
(b) District 2: 131,000 cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: December 29, 1986.

Thomas R. Clark,

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

[FR Doc. 86–29486 Filed 12–30–86; 3:45 pm]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 25 and 95

Access Authorization for Licensee Personnel

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to require each person who holds an NRC access authorization under these Parts and all future applicants for access authorization to complete a new standardized form. The final rule also requires that a security briefing be presented to each person prior to completing the new form. These final actions are necessary to adopt new requirements initiated by the National Security Council.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Richard A. Dopp, Chief, Facilities Security and Operational Support Branch, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–4124.

SUPPLEMENTARY INFORMATION: On March 11, 1983, the President approved a revision to National policy developed by the National Security Council. This revised policy, known as National Security Decision Directive (NSDD) 84, "Safeguarding National Security Information," directs each agency of the Executive Branch that originates or handles classified information to adopt internal procedures to safeguard against unlawful disclosures of classified information. Revisions to certain NRC regulations are needed in order to fulfill the requirements of NSDD–84 and comply with subsequent implementing instructions from the National Security Council and the Information Security Oversight Office (ISOO). Most significantly, NSDD–84 prescribes that a standardized nondisclosure agreement be executed by all persons authorized access to classified information. This document, entitled "Classified Information Nondisclosure Agreement" (SF 189–A), is to be executed as a condition prior to the United States Government authorizing an individual access to classified information. In addition to NRC employees and contractors, also affected are licensees and other personnel who may require access to National Security Information and/or Restricted Data related to a license or application for a license.

In order to implement the required use of the Agreement, two regulatory amendments are proposed. The first relates to those individuals currently holding an NRC access authorization and requires that such individuals must execute the SF 189–A within 365 days of the effective date of these amendments. Prior to the execution of the SF 189–A, such individuals should be given a security orientation briefing which shall include an explanation of the contents of the SF 189–A and the procedures to be followed in ascertaining whether other persons to whom they contemplate disclosing classified information have been approved for access to such information. These procedures include verification of the individual's level of access authorization and determining whether the individual to whom the information is to be disclosed has an established need-to-know. The second amendment relates to those new individuals yet to be processed for an access authorization and requires that such individuals execute the SF 189–A upon receipt of the access authorization notification. Prior to the execution of the SF 189–A, such individuals should be given a security orientation briefing in accordance with § 95.33 of this Chapter. Conforming amendments are being made to § 95.33 to require that the security orientation briefing include an explanation of the contents of the SF 189–A and the procedures to be followed in ascertaining whether other persons to whom they contemplate disclosing classified information have been approved for access to such information.

Because this is an amendment dealing with agency practice and procedure, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendment is effective upon publication in the **Federal Register**. Good cause exists to dispense with the usual 30-day delay in effective date because the amendment is of a minor and administrative nature dealing with a matter of agency procedure, a requirement for all persons currently holding NRC access authorizations and all future applicants for access authorizations to execute a "Classified Information Nondisclosure Agreement" (SF 189–A).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the

Office of Management and Budget approval number 3090–0230.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The Commission has decided that the backfit rule 10 CFR 50.109 shall not be applied to actions to change purely administrative reporting requirements which are not related to imposing more stringent safety or security requirements on the design, construction and operation of nuclear power plants. Single copies of the analysis may be obtained from Richard A. Dopp, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, telephone: (301) 492–4124.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect NRC licensees or other organizations which may require access to National Security Information and/or Restricted Data in connection with a license or application for license. There are 70 entities (which include fuel-cycle facilities, transportation companies, reactors and other organizations) that are currently required to meet the requirements of 10 CFR Parts 25 and 95. Because none of these has been determined to be small as defined by the Regulatory Flexibility Act of 1980, the Commission finds that this rule will not have a significant economic impact upon a substantial number of small entities.

List of Subjects

10 CFR Part 25

Classified information, Investigations, Penalty, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Penalty, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the Authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Independent Offices Appropriation Act of 1952 and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 25 and 95.

PART 25—ACCESS AUTHORIZATION FOR LICENSEE PERSONNEL

1. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

Appendix A also issued under 96 Stat. 1051 (31 U.S.C. 9701).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 25.13, 25.17(a), 25.33 (b) and (c) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 25.13 and 25.33(b) are also issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. A new § 25.18 is added to read as follows:

§ 25.18 Forms requirement for persons granted access authorizations.

Any licensee or other organization which employs individuals possessing an NRC access authorization pursuant to this Part shall have each individual execute, as a condition for continued eligibility for access authorization, and access to NRC classified information, a "Classified Information Nondisclosure Agreement" (SF 189–A). The SF 189–A form shall be completed and forwarded to the NRC Division of Security by (insert date of 365 days from effective date of this rule). Prior to executing the SF 189–A, the affected individual shall be given a security orientation briefing which shall include an explanation of the contents of the SF 189–A and the procedures to be followed in ascertaining whether other persons to whom they contemplate disclosing classified information have been approved for access to such information.

3. Section 25.23 is revised to read as follows:

§ 25.23 Notification of grant of access authorization.

The determination to grant access authorization will be furnished in writing to the licensee or organization that initiated the request. Upon receipt of the notification, the licensee or organization shall obtain, as a condition for grant of access authorization and access to classified information, an executed "Classified Information Nondisclosure Agreement" (SF 189–A) from the affected individual. The individual shall also be given a security orientation briefing in accordance with § 95.33 of this chapter. The signed SF 189–A must be promptly forwarded to the NRC Division of Security. Records of access authorization notification must be maintained by the licensee or requesting organization for one year after the access authorization has been terminated by the NRC Division of Security. This information may also be furnished to other representatives of the Commission, to licensees, contractors, or other Federal agencies. Notifications of access authorization will not be given in writing to the affected individual except:

(a) In those cases in which the determination was made as a result of a Personnel Security Hearing or by Personnel Security Review Examiners, or

(b) When the individual also is the official designated by the licensee to whom written NRC notifications are forwarded.

PART 95—SECURITY FACILITY APPROVAL AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

4. The authority citation for Part 95 continues to read as follows:

Authority: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 10865, as amended, 3 CFR 1959–1963 COMP., p. 398 (50 U.S.C. 401, note); E.O. 12356, 47 FR 14874, April 6, 1982.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); 95.13, 95.15(a), 95.25, 95.27, 95.29(b), 95.31, 95.33, 95.35, 95.37, 95.39, 95.41, 95.43, 95.45, 95.47, 95.51, 95.53, and 95.57 are also issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)).

5. Section 95.33 is revised to read as follows:

§ 95.33 Security Education.

A Security education program shall be established and maintained by the licensee or license related organization which employs individuals possessing NRC personnel security access authorization under Part 25. The program shall include consideration and coverage of personnel access authorization requirements, the physical security features of the facilities, the classified nature of the work and the classification and sensitivity of the information. In addition, the program shall include an explanation of the contents of the "Classified Information Nondisclosure Agreement" (SF 189–A) and the procedures to be followed in ascertaining whether other persons to whom they contemplate disclosing classified information have been approved for access to such information. The procedures include verification of the individual's level of access

authorization and determining whether the individual to whom the information is to be disclosed has an established need-to-know. Each security education program shall provide for the security orientation and continuing security education of employees, and for the appropriate security instruction of terminating employees. Records reflecting an individual's initial and refresher security orientations and security termination shall be maintained for one year after termination of the individual's access authorization.

Dated at Bethesda, Maryland this 13th day of November, 1986.

For the Nuclear Regulatory Commission.

J.W. Roe,

Acting Executive Director for Operations.

[FR Doc. 86-29378 Filed 12-30-86; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 50

Domestic Licensing of Production and Utilization Facilities: Minor Corrective Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to correct information that was inadvertently omitted in a section of 10 CFR Part 50 when an amendment in a final rule published in November 1986 superseded an amendment to the same section that was published in a final rule in August 1986. This amendment is necessary to inform the public of the correct wording of this affected section.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Acting 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.

SUPPLEMENTARY INFORMATION: On August 4, 1986, a final rule entitled "Miscellaneous Amendments Concerning Physical Protection of Nuclear Power Plants" was published in the **Federal Register** (51 FR 27817). One of the amendments revised § 50.54(p) in its entirety, breaking the lengthy paragraph into three shorter paragraphs that included a direct and indirect reference to the "guard training and qualification plan" in (p)(1) and (p)(2), and gave specific instructions for the mailing of a report to the NRC Regional Offices and Headquarters in (p)(2).

Subsequently, a second final rule entitled "Domestic Licensing of Production and Utilization Facilities; Communications Procedures Amendments" was published on November 6, 1986 (51 FR 40303). Section 50.54(p) was also amended by this final rule, and the references to the guard training and qualification plan were omitted. The references to the Regional Offices and Headquarters with regard to the mailing of the report were also omitted. However, it was the intent of the second final rule to establish new procedures for submitting correspondence, reports, applications, etc.; therefore, that omission was deliberate. The mechanism used to indicate submittal information is the phrase in (p)(2) that reads "as specified in § 50.4".

The NRC finds that good cause exists to waive the 30-day deferred effective date provisions of the Administrative Procedure Act (5 U.S.C. 553(d)). Delaying the effective date of this rule would be contrary to the public interest because the affected licensees would not have complete information regarding changes to certain types of plans that would require a report to the NRC. Therefore, the rule is effective on publication in the **Federal Register.**

Environmental Impact—Categorical Exclusion

The NRC determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) Existing requirements were approved by the Office of Management and Budget approval number 3150-0011.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 50.54, paragraph (p) is revised to read as follows:

§ 50.54 Conditions of license.

* * * * *

(p)(7) The licensee shall prepare and maintain safeguards contingency plan procedures in accordance with Appendix C of Part 73 of this chapter for effecting the actions and decisions contained in the Responsibility Matrix of the safeguards contingency plan. The licensee may make no change which would decrease the effectiveness of a security plan, or guard training and qualification plan, prepared pursuant to § 50.34(c) or Part 73 of this chapter, or of the first four categories of information (Background, Generic Planning Base, Licensee Planning Base, Responsibility Matrix) contained in a licensee safeguards contingency plan prepared pursuant to § 50.34(d) or Part 73 of this chapter, as applicable, without prior approval of the Commission. A licensee desiring to make such a change shall submit an application for an amendment to the licensee's license pursuant to § 50.90.

(2) The licensee may make changes to the plans referenced in paragraph (p)(1) without prior Commission approval if the changes do not decrease the safeguards effectiveness of the plan. The licensee shall maintain records of changes to the plans made without prior Commission approval for a period of two years from the date of the change, and shall submit, as specified in § 50.4, a report containing a description of each change within two months after the change is made. Prior to the safeguards contingency plan being put into effect, the licensee shall have:

(i) All safeguards capabilities specified in the safeguards contingency plan available and functional,

(ii) Detailed procedures developed according to Appendix C to Part 73 available at the licensee's site, and

(iii) All appropriate personnel trained to respond to safeguards incidents as outlined in the plan and specified in the detailed Procedures.

(3) The licensee shall provide for the development, revision, implementation, and maintanence of its safeguards contingency plan. To this end, the licensee shall provide for a review at

least every 12 months of the safeguards contingency plan by individuals independent of both security program management and personnel who have direct responsibility for implementation of the security program. The review must include a review and audit of safeguards contingency procedures and practices, an audit of the security system testing and maintenance program, and a test of the safeguards systems along with commitments established for response by local law enforcement authorities. The results of the review and audit, along with recommendations for improvements, must be documented, reported to the licensee's corporate and plant management, and kept available at the plant for inspection for a period of two years.

* * * * *

Dated at Bethesda, Maryland, this 17th day of December, 1986

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 86-29170 Filed 12-30-86; 8:45 am]

BILLING CODE 7590-01-M

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10 CFR Part 110

Imports of Uranium from South Africa

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the import of uranium from South Africa under the general license. This action is necessary to implement the provision of the Comprehensive Anti-Apartheid Act of 1986, enacted October 2, 1986, which prohibits the import into the United States of uranium ore and uranium oxide produced or manufactured in South Africa. The final rule deletes the general import license with respect to the import of any uranium of South African origin, thereby precluding the import of this material unless a specific license is requested and obtained.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Elaine O. Hemby, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-7984 or Joanna M. Becker, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-7630.

SUPPLEMENTARY INFORMATION: On October 2, 1986, Public Law 99-440, the Comprehensive Anti-Apartheid Act of 1986 ("the Act"), was enacted to establish a framework to guide the efforts of the United States to help end the apartheid system in South Africa and to assist in the establishment of a nonracial, democratic form of government in that country. The Act imposes a wide range of measures against South Africa to undermine apartheid including a ban on the importation of uranium ore and oxide "produced or manufactured" in South Africa. The Treasury Department, in Executive Order 12571 of October 27, was delegated authority in the Executive Branch to implement the Act's provisions on the importation of uranium (Section 309(a)). The NRC, which has independent regulatory authority under the Atomic Energy Act over the import of uranium, must also implement provisions in its regulations to conform with the requirements of the Act and ensure that these provisions are consistent with the provisions of the Treasury Department's regulations.

South Africa, as used in the Act, includes the Republic of South Africa; any territory under the administration, legal or illegal, of South Africa (including Namibia); and the "bantustans" or "homelands", to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana, Ciskei, and Venda.

Section 309(a) of the Act prohibits the importation into the United States of uranium ore and uranium oxide that is produced or manufactured in South Africa. The NRC's import regulations in 10 CFR 110.27 currently permit a person to import byproduct material or unirradiated source or special nuclear material, including uranium ore and uranium oxide, from any country under general license if the consignee in the United States is authorized to possess the material. To implement section 309(a), the NRC is amending its regulations in § 110.27 to delete the general license with respect to the import of any uranium of South African origin. A person wishing to import South African origin uranium which is no longer permitted for import under the general license in § 110.27 may submit a specific license request to import this material to the NRC for consideration. However, subject to further clarifications of the scope of the Act, such import license applications may be denied under existing law, including applications to import material intended for further processing in the U.S. (e.g., enrichment) and subsequent reexport to a third country.

It should also be noted that section 303 of the Act prohibits the import (with some exceptions not pertinent here), of any products grown, produced, manufactured by or otherwise exported by a "parastatal organization" of South Africa. A parastatal organization is defined as a corporation, partnership or other entity owned or controlled or subsidized by the South African Government, but not a corporation, partnership, or entity which previously received start-up assistance from the South African Industrial Development Corporation but which is now privately owned. This prohibition covers uranium in any form, as Senator Lugar noted in his remarks introducing S. 2701 (132 CONG. REC. S. 9889-9898, daily ed. July 30, 1986). The Treasury Department published regulations implementing this section on November 19, 1986 (51 FR 41907). The Department of State published a list of South African parastatal organizations on the same date (51 FR 41912).

Environmental Impact: Categorical Exclusion

The NRC has determined that the final rule in Part 110 is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget under approval number 3150-0036.

Regulatory Analysis

The Commission has prepared a regulatory analysis of this final regulation. The analysis examines the costs and benefits of the regulation. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Elaine Hemby, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7984.

Backfit Analysis

The NRC has determined that the backfit analysis provisions in 10 CFR 50.109 do not apply to amendments to 10 CFR Part 110 because Part 110 applies only to the export and import of nuclear facilities, material, and components and does not deal with domestic facilities. Therefore, a backfit analysis has not been prepared for this amendment.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Export, Import, Incorporation by reference, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements, Scientific equipment.

Pursuant to section 309(a) of Public Law 99–440, the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553 the following amendment to 10 CFR Part 110 is published as a document subject to codification.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

1. The authority citation for Part 110 is revised to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 110.1(b)(2) also issued under Pub. L. 96–533, 94 Stat. 3138 (42 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c. and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. Law 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553.

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); 110.20–110.29, 110.50, and 110.120–110.129 also issued under secs. 161b and i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201 (b) and (i)); and 110.53 also issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 110.27 is revised to read as follows:

§ 110.27 Imports.

(a) Except as noted in paragraph (b) of this section, a general license is issued to any person to import byproduct, source, or social nuclear material if the consignee is authorized to possess the material under:

(1) A contract with the Department of Energy;

(2) An exemption from licensing requirements issued by the Commission; or

(3) A general or specific license issued by the Commission or a State with which the Commission has entered into an agreement under Section 274b. of the Atomic Energy Act.

(b) The general license in paragraph (a) of this section does not authorize:

(1) The import of source or special nuclear material in the form of irradiated fuel that exceeds 100 kilograms per shipment; or

(2) The import of uranium of South African origin in any form. As used in this paragraph, "South African origin" includes uranium from the Republic of South Africa; any territory under the administration, legal or illegal, of South Africa (including Namibia); and the "bantustans" or "homelands", to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana, Ciskei, and Venda.

(c) Any person importing special nuclear material under this general license shall provide advance notification of imports to the Commission as specified in § 73.27 of this chapter.

Dated at Washington, DC, this 24th day of December 1986.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 86–29377 Filed 12–30–86; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 309

Disclosure of Information

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule; correction.

SUMMARY: The FDIC is correcting a final rule on its regulation dealing with disclosure of confidential information that was published in the July 30, 1980 edition of the **Federal Register** (45 FR 50550). This action reinstates in the Code of Federal Regulations the last sentence of § 309.6(c) introductory text and the last sentence of § 309.6(c)(7)(iv). Both sentences were inadvertently omitted from the 1981 Code of Federal Regulations and subsequent issues.

EFFECTIVE DATE: July 30, 1980.

FOR FURTHER INFORMATION CONTACT: Jen Hickson, (202) 898–3807.

SUPPLEMENTARY INFORMATION: Accordingly, the FDIC is correcting 12 CFR 309.6:

§ 309.6 [Corrected]

1. By adding to the end of paragraph (c) introductory text the following sentence: In any instance in which copies of FDIC reports of examination or other confidential records are furnished under the provisions of this § 309.6(c), all copies of the reports of examination and other information so furnished shall remain the property of the Corporation and under no circumstances shall the individual, concern or agency (or any director, officer, employee or agent of the foregoing) disclose or make public in any manner the reports or exempt records without express written authorization from the Director of the Corporation's Division of Bank Supervision as provided in § 309.6(c)(7).

2. By adding at the end of paragraph (c)(7)(iv) the following sentence: Before authorizing the disclosure, the Director of the Corporation's Division of Bank Supervision may require that both the party having custody of a copy of a Corporation report of examination or record and the party seeking access to the report or record agree to such limitations as the Director of the Corporation's Division of Bank Supervision deems necessary to protect the confidential nature of the record, the financial integrity of any bank to which the record relates and the legitimate privacy interests of any individual named in such report or record.

Dated: December 23, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–29317 Filed 12–30–86; 8:45 am]

BILLING CODE 6714-01-M

12 CFR Part 347

Foreign Activities of Insured State Nonmember Banks

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Final rule; correction.

SUMMARY: This document corrects Part 347 of FDIC's regulations by removing paragraphs (1), (2) and the undesignated paragraph at the end of § 347.3(a). The paragraphs were erroneously included in the Code of Federal Regulations after a revision of section 347.3(a) in the June 20, 1983 edition of the **Federal Register** (48 FR 28078, June 20, 1983).

EFFECTIVE DATE: July 20, 1985.

FOR FURTHER INFORMATION CONTACT: Jen Hickson, (202) 898–3807.

SUPPLEMENTARY INFORMATION: Accordingly, § 347.3(a) is amended by removing paragraphs (1), (2) and the undesignated paragraph at the end thereof.

Dated: December 23, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–29316 Filed 12–30–86; 8:45 am]

BILLING CODE 6714–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 123

Disaster Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: A summary of the interest rates applicable to disaster loans prior to the effective date of current legislation appears at Appendix A to 13 CFR Part 123. Due to numerous statutory changes it has become impossible to effectively summarize the history of interest rates in a small space. This rule will eliminate the Appendix. Historical data will remain available in prior issues of the Code of Federal Regulations and the original Federal Registers.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, Small Business Administration, 1441 L Street NW., Washington, DC 20416, 202–653–6879.

SUPPLEMENTARY INFORMATION: Appendix A of 13 CFR Part 123 contains historical information about interest rates applicable to disaster loans made in response to disasters declared from January 1, 1971, through April 18, 1984. Applications for such loans have already been processed. Questions or appeals arising from those periods must be resolved by review of the entire regulation in effect at the time. Therefore, the information in the summary appearing in Appendix A has no legal or practical effect on future loan applications.

Interest rates and effective dates have been changed several times since 1978. Therefore any short summary, by its nature, will be incomplete and confusing. More complete and accurate historical information may be found in prior editions of the Code of Federal Regulations and original Federal Registers. For these reasons, Small Business Administration deletes Appendix A and the reference to it in § 123.25(c).

Executive Order 12291

This regulation is not a major rule because it will not have an annual economic effect of $100 million. The Appendix is for historical information only, and does not affect the Agency's or any borrower's rights or liabilities.

Regulatory Flexibility Act

SBA is publishing this rule in final form pursuant to 5 U.S.C. 553(b) (A) and (B). SBA finds that notice of proposed rulemaking would be impractical and unnecessary. This rule does not change the rights of any entity or the responsibilities of the agency. The deletion removes language which has no continuing legal effect. More accurate statements of the information are available from other readily available sources. SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

It will impose no reporting or recordkeeping requirements.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small business.

PART 123—[AMENDED]

For the reasons set forth above, 13 CFR Part 123 is amended as follows:

1. The authority citation for part 123 continues to read as follows:

Authority: Secs. 5(b)(6), 7(b), (c), (f) of Small Business Act, 15 U.S.C. 634(b)(6), 636 (b), (c), (f); Pub. L. 98–270, Title III; Pub. L. 99–272, 18006, unless otherwise noted.

2. The Table of Contents is amended by removing the words "Appendix A" and the material that follows.

§ 123.25 [Amended]

3. Section 123.25, paragraph (c) is amended by removing the final sentence in parentheses.

Appendix A—[Removed]

4. Part 123 is amended by removing Appendix A.

Dated: December 23, 1986.

Charles L. Heatherly,

Acting Administrator.

[FR Doc. 86–29404 Filed 12–30–86; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–148–AD; Amdt. 39–5501]

Airworthiness Directives; Boeing Models 727 and 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 727 and 737 series airplanes, that requires inspection and modification of the "B" system hydraulic pumps. This amendment requires either incorporation of an electrical ground fault protection system, which is an optional terminating action of the existing AD, or replacement of the hydraulic pumps with new or upgraded hydraulic pumps. This amendment is prompted by two recent reports of pump failures on Model 737 airplanes which caused fires that extensively damaged the airplanes.

DATE: February 2, 1987.

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

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Habbestad, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office; telephone (206) 431–1942. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive superseding an existing AD to require the installation of ground fault protection to the existing hydraulic pumps or installation of new or improved pumps, was published in the Federal Register on August 12, 1986 (51 FR 28832). The comment period closed October 6, 1986.

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

consideration has been given to the three comments received.

One commenter recommended adoption of the proposed AD as written and encouraged early issuance of the AD.

Another commenter recommended extending the compliance time from one year to two years because it anticipates a lead time of 10 months for the modification parts. The FAA does not concur. The airplane manufacturer has advised that the combined availabiity of the modification parts and pumps would not preclude meeting a compliance time of one year for accomplishing either of the two means of compliance required by the AD.

Another commenter suggested that the "default" system (ground fault protection system), required by paragraph A. of the AD, is "not the solution to solving the problem that now exists." The commenter advised that a newly designed pump, which would correct the existing problem, would be made available from a different supplier beginning in January 1987. The commenter requested that the compliance date be increased to two years to allow for the increased lead time for ordering, receiving, and installing the new and improved pumps. The FAA does not concur. The FAA has determined that the use of the ground fault protection circuit is an acceptable means to prevent fires associated with the failed pump motor. The FAA is aware that a new pump from a different manufacturer is undergoing acceptance tests; however, this product has not as yet been presented to the FAA for approval, nor has a specific date been established for its availability. Should an acceptable pump become available in the future, an operator who wished to install such a pump could apply for an alternate means of compliance under paragraph B. of the AD.

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

It is estimated that 186 Model 727 and 94 Model 737 airplanes of U.S. registry will be affected by this AD. If an operator elects to install ground fault protection circuit breakers, parts for the Models 727 and 737 are estimated to cost $2,650 per airplane, and will take approximately 24 manhours to install. If an operator elects to install new hydraulic pumps, parts for the Models 727 and 737 are estimated to cost $10,000 per airplane, and will require 10 manhours to install. If an operator elects to install "upgraded" pumps (existing pumps overhauled in a manner which makes them equivalent to new pumps), parts for the Models 727 and 737 are estimated to cost $8,400 per airplane, and will require 12 manhours to install. The estimated labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators will be from $2,486,400 to $2,912,000 to replace the pumps, or $1,010,800 to install a ground fault protection system.

For the reasons discussed above, the FAA has determined that this regulation is not considered major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Models 727 and 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 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 13 CFR 11.89.

§ 39.13 [Amended]

2. By superseding AD 76-22-08, Amdt. 39-2762, as follows:

Boeing: Applies to Boeing Models 727, 737-100, and 737-200 series airplanes, equipped with hydraulic system "B" Abex P/N 57186 pump motor, certificated in any category. Compliance required as indicated unless previously accomplished.

To prevent a hydraulic system "B" Abex P/N 57186 pump motor internal wiring fault from burning a hole in the case and igniting the escaping hydraulic fluid, which could ignite fuel leakage, accomplish the following:

A. Within one year after the effective date of this AD either:

1. Install the ground fault protection systems in the hydraulic system "B" Abex pump motor electric power circuits in accordance with Boeing Service Bulletin 727-29-47, Revision 2, dated October 8, 1976, or 737-29-1029, Revision 2, dated October 8, 1976, as applicable, or later FAA-approved revisions; or

2. Install the hydraulic "B" system motor driven pumps, either new or upgraded, in accordance with Boeing Service Bulletin 727-29-55 dated April 30, 1980, or 737-29-1036, dated April 30, 1980, or later FAA-approved revisions.

B. An 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.

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

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

This supersedes AD 76-22-08, Amendment 39-2762.

This amendment becomes effective February 2, 1987.

Issued in Seattle, Washington, on December 19, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-29222 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-223-AD; Amdt. 39-5500]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administrative (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Pratt and Whitney Aircraft PW2037 engines, which requires inspection and modification, if necessary, of the thrust reverser control system, and modification of the monitoring system. This AD is prompted by reports of missing restrictor check valves from the control port of the thrust reverser isolation valves and a failure of the Engine Indication and Crew Alerting System (EICAS) to indicate an unlock thrust reverser condition. These conditions, if not corrected, could lead

to an uncommanded deployment of a thrust reverser in flight.

EFFECTIVE DATE: January 12, 1987.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98168. 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. Mike Pasion, Aerospace Engineer, Propulsion Branch, ANM-140S; telephone (206) 431-1974. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: During production testing on a Boeing Model 757 airplane, it was discovered that the restrictor check valves were omitted from the control port of both thrust reverser isolation valves. The restrictor check valve is used to prevent hydraulic control line pressure surges, generated by the isolation valve closure, from cyclically unlocking and attempting to extend the thrust reverser. Additional testing on another airplane also revealed that the Engine Indication and Crew Alerting System (EICAS) did not always display the reverser unlock condition. The absence of the reverse unlock caution display on EICAS, effectively masking a thrust reverser sleeve unlocked condition from the flight deck crew, and a delay in activation of the autorestow system, has been traced to magnetic coupling between the unlock and auto-reverser proximity sensors.

Consequences of a combination of pressure surges through the thrust reverse isolation valve and absence of an EICAS caution indication could allow the flight crew to attempt take off with a reverser unlocked. Further, if the auto-restow feature becomes inoperable, the potential exists of uncommanded deployment of a thrust reverser in flight.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-78A0006, dated August 7, 1986, which describes the inspection of the thrust reverser isolation valves for the installation of the restrictor valves; the installation of spacers under the thrust reverser unlock and auto-restow proximity sensors; and the operational test of the thrust reverser unlock indication system.

Since this condition is likely to exist or develop on other airplanes of this same type design, this AD requires inspection and modification in accordance with the service bulletin previously mentioned.

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 (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 757 series airplanes equipped with Pratt and Whitney Aircraft PW2037 engines, as listed in Boeing Alert Service Bulletin 757-78A0006, dated August 7, 1986, certificated in any category.

To minimize the potential for uncommanded deployment of a thrust reverser in flight, accomplish the following within 30 days after the effective date of this AD, unless previously accomplished:

A. Inspect and, if necessary, install a restrictor check valve on the control port of both thrust reverser isolation valves in accordance with Boeing Alert Service Bulletin 757-78A0006, dated August 7, 1986, or later FAA-approved revision.

B. Modify the unlock and auto-restow proximity sensors' installation in accordance with Boeing Alert Service Bulletin 757-78A0006, dated August 7, 1986, or later FAA-approved revision.

C. 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.

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

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

This amendment becomes effective January 12, 1987.

Issued in Seattle, Washington, on December 19, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-29227 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-40-AD; Amdt. 39-5497]

Airworthiness Directives; British Aerospace Models HP 137 Mk.1, Jetstream Series 200 and Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to British Aerospace (BAe) Models HP 137 Mk.1, Jetstream Series 200 and Jetstream Model 3101 airplanes, which requires inspection and repair (if necessary) of the yoke pintle housing for the landing gear attachment spigot of the main leg forging. A case has been reported of a crack in this area of the forging, attributed to stress corrosion found during routine landing gear removal. This action will detect these cracks before landing gear failure and preclude the loss of the airplane.

DATE: *Effective Date:* January 30, 1987.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

ADDRESSES: BAe Mandatory Service Bulletin (MSB) No. 32–A–JA851226 dated December 19, 1985, and BAe Air Weapons Division (AWD) Service Bulletin (S/B) No. 32–19 dated December 19, 1985, applicable to this AD may be obtained from British Aerospace, Engineering Department, P.O. Box 17414, Dulles International Airport, Washington, DC 20041; Telephone (703) 435–9100. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Brussels Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium; Telephone 513.38.30; or Mr. Harvey Chimerine, FAA, ACE–109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374–6932.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring both initial and repetitive visual and eddy current inspections, and repair if necessary, of the yoke pintle housing for the landing gear attachment spigot of the main leg forging on all BAe Model HP 137 Mk.1, Jetstream Series 200 and Jetstream Model 3101 airplanes, was published in the **Federal Register** on September 29, 1986 (51 FR 34476). The proposal resulted from BAe, the manufacturer, receiving a report of a crack in the yoke pintle housing for the landing gear attachment spigot of the main leg forging. The reported crack, which was found during routine landing gear removal, has been attributed to stress corrosion. Consequently, BAe issued MSB No. 32–A–JA851226 dated December 19, 1985, applicable to BAe Model HP 137 Mk.1, Jetstream Series 200 and Jetstream Model 3101 airplanes, referencing BAe AWD S/B dated December 19, 1985, which requires both initial and repetitive visual and eddy current inspections, and repair if necessary, of the yoke pintle housing for the landing gear attachment spigot of the main leg forging. These inspections and repairs are required to prevent the development of hazardous cracks in the main landing gear forging.

The Civil Airworthiness Authority-United Kingdom (CAA–UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom, classified this BAe service bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under United Kingdom 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 and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of BAe MSB No. 32–A–JA851226 and BAe AWD No. 32–19 and the mandatory classification of this service bulletin by the CAA–UK, and concluded that the condition addressed by BAe MSB No. 32–A–JA851226 and BAe AWD No. 32–19 was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change. The FAA has determined that this regulation involves 26 airplanes at an approximate annual cost of $600 for each airplane or a total annual fleet cost of $15,600.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

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 Rules Docket at the location provided under the caption "**ADDRESSES**"

List of Subjects in 14 CFR Part 39

Air Transportation, Aviation safety, Aircraft, Safety

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 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:

British Aerospace: Applies to Models HP 137 Mk.1 (all serial numbers), Jetstream Series 200 (all serial numbers), and Jetstream Model 3101 airplanes (serial numbers 601 to 606) equipped with Main Landing Gear Type Numbers 1863 and 1864 (all suffixes), certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent the development of hazardous cracks in the main landing gear pintle housing, accomplish the following:

(a) Within 300 landings and every 1200 landings thereafter: Conduct an eddy current inspection in accordance with Section 2 "Accomplishment Instructions", Part A "Non-destructive Testing" of British Aerospace (BAe) Mandatory Service Bulletin (MSB) No. 32–A–JA851226 dated December 19, 1985, Section 2 "Accomplishment Instructions" of BAe Air Weapons Division (AWD) Service Bulletin (S/B) No. 32–19 dated December 19, 1985. If cracks are found, before further flight, carry out repairs in accordance with AWD S/B No. 32–19.

(b) At intervals of 300 landings after the initial inspection, required by paragraph (a) of this AD, conduct a visual inspection in accordance with Section 2 "Accomplishment Instructions," Part B, "Visual Inspections" of AWD S/B No. 32–19. If indications of cracks are discovered, conduct an eddy current inspection in accordance with paragraph (a) of this AD. If cracks are found, before further flight, carry out repairs in accordance with AWD S/B No. 32–19.

(c) Within 300 landings after a heavy or abnormal landing, conduct an eddy current inspection in accordance with paragraph (a) of this AD.

(d) If the actual number of landings is unknown for the purpose of complying with this AD, one landing may be substituted for each one-half hour of flight unless the operator substantiates a different flight hours to landings ratio. This substantiation must be submitted to, and approved by, the Manager, Aircraft Certification Staff, address below

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished

(f) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishment of these

inspections concurrent with other scheduled maintenance on the airplane.

(g) 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, B-1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to British Aerospace, Engineering Department, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041; Telephone (703) 435-9100; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on January 30, 1987.

Issued in Kansas City, Missouri, on December 16, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-29230 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-69-AD; Amdt. 39-5498]

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. (MHI) and Mitsubishi Aircraft International, Inc. (MAI) Airplanes, Models MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Mitsubishi Heavy Industries, Ltd. (MHI) and Mitsubishi Aircraft International, Inc. (MAI) Models MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60, herein referred to as "MU-2B" airplanes, which requires modification of certain of these airplanes with manual ignition switches, and for all airplanes, the use of continuous ignition during flight in meteorological conditions shown to result in flameout until such conditions no longer exist. The FAA has received numerous reports of single and dual-engine flameouts attributed to known or suspected ice ingestion on airplanes powered by Garrett TPE-331 engines. Four in-flight and six ground flameouts were reported on MU-2B airplanes. The requirements of this AD will prevent significant power interruptions and spool down due to inadvertent flameout by providing a source of ignition to reestablish combustion quickly once the ingested ice has passed through the engine and a proper fuel/air mixture is reestablished.

DATES: *Effective Date:* December. 31, 1986. Comments for inclusion in the Rules Docket must be received on or before January 30, 1987.

Compliance: As prescribed within the body of the AD.

ADDRESSES: Garrett Turbine Engine Company (GTEC) Operating Information (OI) Letter 331-11 dated April 30, 1985, applicable to this AD may be obtained from GTEC, P.O. Box 5217, Phoenix, Arizona 85010; Telephone (602) 231-1000; or the Rules Docket at the address below. The GTEC OI Letter 331-11 dated April 30, 1985, and MHI Service Recommendation (SR) 066B dated November 13, 1986, or MAI SR 040/74-001, Revision A, dated December 11, 1986, may be obtained from Beech Aircraft Corporation (Licensee for Mitsubishi), P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681-7111. Send comments on the AD in duplicate to FAA, Central Region, Attention: Rules Docket, No. 86-CE-69-AD, Office of the Regional Counsel, 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. John P. Dow, Sr., FAA, Central Region, Project Support Section Foreign, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-6932.

SUPPLEMENTARY INFORMATION: Numerous U.S. certificated airplanes, including the Mitsubishi MU-2B airplanes, are powered by GTEC TPE-331 engines. The FAA has received reports of 53 single and dual-engine flameouts in the U.S. and overseas from operators of airplanes powered by these engines. All of these flameouts occurred during or after a known or suspected icing encounter and are attributed to ice ingestion causing an interruption of power and spool down of the engine. There were eleven reports of dual-engine flameouts, seven of those occurring in flight and four on the ground. In three of the seven in-flight reports, both engines flamed out during final approach, and in two of the three reports, the airplane landed without engine power. The ice ingestion/flameout event apparently occurs because of ice buildup prior to use of anti-ice protection, not using or prematurely turning off ignition, or anti-ice system failure. In some cases, crew action was based upon the mistaken belief that airframe and engine installations were free of the ice hazard because of clear air conditions with no visible moisture and no substantial airframe ice accretion.

Four in-flight and six ground flameouts were reported on the MU-2B airplanes. Analysis of these events, and coordination with the airframe and engine manufacturers has led to certain conclusions. The number of reports correlates very closely with exposure to an icing environment which is greatest for FAR 135 operators who fly approximately 2,000 hours per airplane per year, and in some regions, are routinely exposed to flight in an icing environment during the icing season on every flight at lower altitudes, with no opportunity to deviate from the route or delay departures substantially. These FAR 135 operators are also required to submit service difficulty reports (SDRs). FAR 91 operators submit SDRs on a voluntary basis only, and from the record, at a lower rate than the FAR 135 operators. The greater exposure and required reporting are believed to account for the apparent but incorrect assumption of a high rate of flameouts of engines installed on certain commuter airplanes, and no potential problem with engines installed on other airplanes.

The engine manufacturer commented that, despite some differences in gas path parameters between various models of TPE-331 engines installed in these airplanes, none of the differences were believed to have a significant effect on ice ingestion capability margin. These facts have led the FAA to conclude that the potential for flameout due to icing exists in all GTEC TPE-331 engine installations, and no model variant appears more or less susceptible to flameout due to design features of the engine or installation variances. It has been observed that, while some models of airplanes have accrued a substantial engine time with few flameouts, the data must be tempered by understanding that only a small fraction of the flight time, perhaps one hour per hundred, may be in an icing environment by FAR 91 operators. Also, for a twin engine airplane, the engine time is twice the flight time and the concern is dual engine flameouts per flight hour. These two considerations will thereby increase the apparent flameout per engine hour rate by an estimated factor of at least 200. While rate of occurrence is discussed, a singular event in the fleet is sufficient to initiate AD action.

From these facts, the FAA has observed that a dual engine flameout is possible at low altitudes and locations that could preclude a safe landing. It is also possible that total loss of power in

an icing environment will preclude the use of bleed-air powered surface de-icing equipment. Either of these conditions could result in a stall or stall/spin accident.

The GTEC has demonstrated that the power interruptions caused by a flameout event can be minimized by the use of an automatic-relite (auto-relite) ignition system which senses power or RPM loss, to energize the ignition exciter unit until power or RPM is restored, then de-energizes the ignition exciter unit.

In 1981, the FAA issued an Airworthiness Directive (AD) against certain airplanes requiring installation of an auto-relite for flight into known icing conditions. Since that time, ten flameout reports were received on that model with only two occurring in-flight. The eight ground flameouts occurred when the auto-relite was disabled. Verification of the in-flight events revealed that the flameouts occurred because the auto-relite was not enabled when the ignition selector was improperly set. The auto-relite system on the airplane model evidently functioned adequately to restore power quickly after an ice-induced in-flight flameout. A subsequent bird ingestion event also demonstrated the auto-relite effectiveness in other than ice ingestion events. Auto-relite is not presently required in another similar model. The latter model accrues approximately 21 percent less FAR 135 flight time than the former model. Seven in-flight flameout reports were received on the latter during the same period.

Considering the above facts, the FAA has concluded that: (1) The dual engine in-flight flameout is an unsafe condition; (2) Ice-induced dual-engine flameouts are probable; (3) No GTEC TPE-331 model engine can be excluded from the consequences of ice-induced flameout (except the TPE-331-14, which has auto-relite); (4) No model aircraft having a TPE-331 engine can be excluded from the probability of ice-induced flameout using fleet exposure times as substantiation of reliability when an ice-induced flameout event has been reported; (5) Continuous ignition or auto-relite is effective in rapidly restoring power after an ice-induced flameout.

The FAA has determined there are approximately 670 airplanes affected by this AD. The cost of compliance with the AD is estimated at $6.45 per additional ignition hour per airplane, and a one-time fleet cost of $566,000 for installation of the manual ignition switch.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued requiring the use of continuous ignition when operating in actual or potential icing conditions, and installation of a manual ignition control switch on certain Mitsubishi Heavy Industries, Ltd. (MHI) and Mitsubishi Aircraft International, Inc. (MAI) Models MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60, airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of 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 regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

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 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:

Mitsubishi Heavy Industries, Ltd. and Mitsubishi Aircraft International, Inc.: Applies to Models MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60 (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent engine flameout when in or departing an icing environment, accomplish the following:

(a) Modify the airplanes not equipped with manual ignition switches.

(1) For MU-2B-10, -15, -20, -25, -26 (S/N 008 through 347 except S/N 313, 321), -30, -35, and -36 (S/N 501 through 696 except S/N 652, 661), modify the airplane as described in MHI SR 066B dated November 13, 1986, Instructions 1.0 through 8.0. Compliance with GTEC S/B TPE/TSE 331-74-0003 is optional.

(2) For MU-2B-25, -26, -26A (S/Ns 313SA, 321SA, 348SA through 364SA, and 366SA through 394SA), -35, and -36A (S/Ns 652SA, 661SA, 697SA through 699SA and 701SA through 730SA), modify the airplane as described in MAI SR 040/74-001, Revision A, dated December 11, 1986, Accomplishment Instructions paragraphs A-G. Compliance with GTEC S/B TPE/TSE 331-74-0003 is optional.

(b) For all airplanes, revise the airplane Pilot's Operating Manual and Airplane Flight Manual (POM/AFM) by inserting Appendix 1 of this AD in the "LIMITATIONS" section of the POM/AFM. Appendix 1 procedures supersede any other POM/AFM procedures which may be contradictory.

(c) The requirements of paragraph (b) of this AD may be accomplished by the holder of a pilot certificate issued under Part 61 of the Federal Aviation Regulations on any airplane owned or operated by him. The person accomplishing these actions must make the appropriate aircraft maintenance record entry as prescribed by FAR 91.173.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, ACE-115W, 1800 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400 for MAI airplanes, or the Western Aircraft Certification Office, ANW-170W, 15000 Aviation Boulevard, Hawthorne, California 90261; Telephone (213) 297-1351 for MHI airplanes.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to GTEC, P.O. Box 5217, Phoenix, Arizona 85010; Telephone (602) 231-1000; Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681-9111; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on December 31, 1986.

Issued in Kansas City, Missouri, on December 16, 1986.

Edwin S. Harris,

Director, Central Region.

Appendix 1—Supplement to the POM/AFM, Mitsubishi MU-2B-10, -15, -20, -25, -26, -26A, -30, -35, -36, -36A, -40, and -60,

The CONTINUOUS IGNITION/MAN IGN switches shall be selected to ON during all operations in actual or potential icing conditions described herein:

(1) During takeoff and climb out in actual or potential icing conditions.

*(2) When ice is visible on, or shedding from propeller(s), spinner(s), or leading edge(s).

*(3) Before selecting ANTI-ICE, when ice has accumulated.

(4) Immediately, any time engine flameout occurs as a possible result of ice ingestion.

(5) During approach and landing while in or shortly following flight in actual or potential icing conditions.

*Note: If icing conditions are entered in flight without the engine antiicing system having been selected, switch one ENGINE system to the ANTI-ICE ON position. If the engine runs satisfactorily, switch the second ENGINE system to the ANTI-ICE ON position and check that the second engine continues to run satisfactorily.

CAUTION

Flight in actual or potential icing conditions will be limited by duty cycle of the ignition system. Ignition system time limits must be observed to prevent exceeding duty cycle times. Operator should verify these limits for his particular installation.

For the purpose of this supplement, the following definition applies:

"Potential icing conditions in precipitation or visible moisture meteorological conditions:

(1) Begin when the OAT is +5 °C (+41 °F) or colder, and

(2) End when the OAT is +10 °C (+50 °F) or warmer."

The procedures and conditions described in this appendix supersede any other POM/AFM procedures and conditions which may be contradictory.

[FR Doc. 86-29228 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ACE-03]

Alteration of Transition Area, Spencer, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to alter the 700-foot transition area at Spencer, Iowa, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Spencer, Iowa, Municipal Airport, utilizing the Spencer VOR as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR), and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, an additional approach procedure is being developed for the Spencer, Iowa, Municipal Airport, utilizing the Spencer VOR as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails alteration of the transition area at Spencer, Iowa, at or above 700 feet above the ground, within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR), and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B, dated January 2, 1986.

Discussion of Comments

On page 36563 of the **Federal Register**, dated October 14, 1986, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations, so as to designate a transition area at Spencer, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

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

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Spencer, Iowa

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Spencer, Iowa, Municipal Airport (Lat. 43°09'45" N., Long. 95°11'30" W.) and within 4 miles each side of the Spencer VOR 314° radial, extending from the 6.5 mile radius zone to 8.5 miles northwest of the VOR; within 4 miles each side of the Spencer VOR 122° radial, extending from the 6.5 mile radius zone to 8.5 miles southeast of the VOR; within 3.75 miles each side of the Spencer VOR 122° radial, extending from the 6.5 mile radius zone to 12.5 miles southeast of the Spencer VOR; excluding that portion that overlies the Milford, Iowa, transition area.

This amendment becomes effective at 0901 UTC February 12, 1987.

Issued in Kansas City, Missouri, on December 18, 1986.

Clarence E. Newbern,

Acting Manager, Air Traffic Division.

[FR Doc. 86-29366 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-29]

Alteration of Transition Area—Harry W. Browne Airport, Saginaw, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the existing Harry W. Browne Airport, Saginaw, Michigan, transition area to accommodate a new NDB Runway 27 Standard Instrument Approach Procedure (SIAP) to Harry W. Browne Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, April 9, 1987.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 3, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Harry W. Browne Airport, Saginaw, Michigan, transition area (51 FR 39867).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Harry W. Browne, Saginaw, Michigan, transition area to accommodate aircraft utilizing an NDB Runway 27 SIAP.

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, Transition areas.

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Saginaw Harry W. Browne Airport, MI—[Amended]

That airspace extending upward from 700 feet above the surface within a 5.5 mile radius of Harry W. Browne Airport (lat. 43°25'58" N., long. 83°51'43" W.); and within 2 miles each side of the 086° bearing from Harry W. Browne Airport, extending from the 5.5 mile radius to 6.5 miles east of the airport excluding that portion within the Saginaw Tri-City Airport, Michigan, transition area.

Issued in Des Plaines, Illinois, on December 15, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86-29220 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AEA-11]

Alteration to Control Zone, Calverton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the configuration of the Calverton/Peconic Field Control Zone by deleting the southwest extension from the 5-mile radius zone. This action is taken, at the request of the using agency, to relinquish the airspace, and permit it to return to unrestricted public use.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace and Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

History

On Thursday, July 31, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Calverton, NY, Control Zone configuration at Calverton Naval Weapons Industrial Reserve Plant (Peconic Field) by deleting the southwest extension, within 3 miles each side of the Calverton, NY, VORTAC 210° radial, from the 5-mile radius zone. (51 FR 27422). Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the configuration of the Calverton/Peconic Field Control Zone by deleting the southwest extension from the 5-mile radius zone. This action is taken, at the request of the using agency, to relinquish the airspace, and permit it to return to unrestricted public use. The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Calverton, NY. [Amended]

By removing the words "within 3 miles each side of the Calverton, NY, VORTAC 210° radial, extending from the 5-mile radius zone to 8.5 miles southwest of the VORTAC."

Issued in Jamaica, New York, on December 18, 1986.

Edmund Spring,

Manager, Air Traffic Division.

[FR Doc. 86-29365 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AEA-2]

Alteration of Control Zone, Fort Eustis, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the published description at Fort Eustis, VA, to reflect minor adjustments to the parameters of the control zone. The intended effect of this action is to ensure segregation of aircraft, using a new NDB Runway 14 and Copter NDB 136° instrument approach procedure in instrument conditions, from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace and Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

History

On Friday, November 8, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the published description at Fort Eustis, VA, to reflect a minor realignment of the control zone. This action will provide segregation of aircraft, using a new NDB Runway 14 and Copter NDB 136° instrument approach procedure in instrument conditions, from other aircraft operating under visual weather conditions in controlled airspace (50 FR 46447). Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations is to alter published description at Fort Eustis, VA, to reflect a minor realignment of the control zone. The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Fort Eustis, VA—[Revised]

That airspace within a 5-mile radius of the center (Lat. 37°07'45"N., Long. 76°36'45"W.), of Felker Army Airfield, Fort Eustis, VA; within 3 miles each side of the 316° bearing from Felker NDB, extending from the 5-mile radius zone to 8.5 miles northwest of the NDB; excluding the portion that coincides with the Newport News, VA, Control Zone. This Control Zone is effective during specific times established in advance by Notice to Airmen. The effective dates and times will thereafter be published continuously in the Airport/Facility Directory.

Issued in Jamaica, New York, on December 18, 1986.

Edmund Spring,

Manager, Air Traffic Division.

[FR Doc. 86-29363 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 86-AWP-29]

Alteration of VOR Federal Airways, Reporting Points and Jet Routes—California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments change the description of certain Federal Airways and Jet Routes in the state of California, by substituting the name Clovis for Pinedale, and changes the Pinedale, CA, Reporting Points. Recently, several incidents have occurred in which pilots proceeded to the wrong navigational aid (NAVAID) because of the similar sounding names of Palmdale and Pinedale. This action changes the name of Pinedale to Clovis wherever it appears but does not alter controlled airpsace or airway configurations.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

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.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations change the name to the Pinedale VORTAC to the Clovis VORTAC in the description of each airway and jet route in which the Pinedale VORTAC was used. There have been several incidents recorded where pilots misunderstood a clearance involving the Pinedale or Palmdale VORTAC and proceeded toward the wrong NAVAID. This action will preclude any confusion of the two NAVAIDs in the future. Because these actions are minor technical amendments which reflect a facility name change but do not affect airspace assignments, and are actions in which the public would not be particularly interested, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Sections 71.123, 71.203, 71.207, and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were 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 full 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 Parts 71 and 75

Aviation safety, VOR Federal airways, Reporting points and jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as amended (51 FR 8, 9, 6103 and 39649), are further amended, as follows:

PART 71—[AMENDED]

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–23, V–165, V–230 and V–585—[Amended]

Wherever Pinedale appears substitute Clovis.

§ 71.203 [Amended]

3. Section 71.203 is amended as follows:

Pinedale, CA—[Remove].
Clovis, CA—[New].

§ 71.207 [Amended]

4. Section 71.207 is amended as follows:

Pinedale, CA—[Remove].
Clovis, CA—[New].

PART 75—[AMENDED]

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

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

§ 75.100 [Amended]

6. Section 75.100 is amended as follows:

J–65 and J–110—[Amended]

Wherever Pinedale appears substitute Clovis.

Issued in Washington, DC, on December 22, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–29231 Filed 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 86–AWA–18]

Alteration and Establishment Jet Routes—Expanded East Coast Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a new Jet Route J–211 in the states of Maryland and Pennsylvania. This amendment is part of the Expanded East Coast Plan (EECP). The EECP's objective is to establish an improved air traffic system that is designed to reduce delays for aircraft en route to or departing from terminals in the eastern United States. The EECP is being implemented in several segments until completed.

EFFECTIVE DATE: 0901 UTC, February 12, 1987.

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:

History

On June 10, 1986, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter the descriptions of Jet Routes J–30, J–34, J–134, J–149, J–162, and J–518 and establish new J–211 (51 FR 20978). Due to numerous technical problems Jet Route J–211 was the only route that passed a flight check. Accordingly, the other proposed amendments have not been adopted. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes the amendment establishing J–211 is the same as proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations establishes new J–211. Currently, east coast traffic flows are saturated and compressed in the New York metropolitan area that substantial delays are experienced daily. The establishment of J–211, as part of the EECP, will alleviate this congestion and reduce delays to and from terminals in the eastern United States.

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

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

PART 75—[AMENDED]

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

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

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

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

]-211—[New]

From Johnstown, PA, via INT Johnstown 129° and Westminster, MD, 292° radials; to Westminster.

Issued in Washington, DC, on December 19, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-29232 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 91

[Docket No. 24394, Special Federal Aviation Regulation No. 47-1]

Special Flight Authorization for Noise Restricted Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Special Federal Aviation Regulation (SFAR) 47 provides for limited issuance of special flight authorizations to conduct certain nonrevenue operations that are otherwise prohibited by the Part 91, Subpart E, noise restrictions. The current rule terminates on December 31, 1986. This rule extends SFAR 47 through December 31, 1987, and reduces the purposes for which a special flight authorization may be issued by not permitting the return to the United States of an exported aircraft except to hushkit or scrap the aircraft or to permit movements between storage locations in the United States.

EFFECTIVE DATE: Effective date of this amendment is January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Tedrick, Noise policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267-3558.

SUPPLEMENTARY INFORMATION:

Background

Under Part 91 of the Federal Regulations (FAR), on or after January 1, 1985, no person may operate a civil subsonic turboject airplane with a maximum weight of more than 75,000 pounds to or from an airport in the United States unless that airplane has been shown to comply with Stage 2 of Stage 3 noise levels under Part 36. This restriction applies to U.S. registered aircraft that have standard airworthiness certificates and foreign registered aircraft that would be required to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United States. SFAR 47 was adopted February 26, 1985 (50 FR 7751; February 26, 1985), to permit certain noncomplying operations of noise restricted aircraft which would be unlawful without a formal grant of exemption under FAR Part 11. The FAA has determined these limited issuance special flight authorizations to be very cost beneficial and time efficient to both the government and the private sector. However, SFAR 47 expires on December 31, 1986, and to permit the operation of remaining non-noise compliant airplanes to, from, or within the United States, this amendment extends SFAR 47 for a one year period until December 31, 1987.

Experience gained in the issuance of these special flight authorizations indicates that certain changes to the purposes for which SFAR 47 may be utilized are required. The adoption of this amendment precludes some operations now permitted by SFAR 47. However, applicants seeking authorization for operations previously permitted under SFAR 47 will still be able to petition for an exemption under FAR Part 11 for those operations.

This rule amends Section 2 of SFAR 47 so that operators importing or returning aircraft into the United States after export can only obtain special flight authorizations to permit them to deliver the aircraft to be scrapped or for modification to bring the aircraft into compliance with Stage 2 of Stage 3 noise levels. In addition, operations solely to change storage locations within the United States will no longer be authorized under SFAR 47. Aircraft in storage in the United States can still be exported, moved to be scrapped or modified to comply with the noise level requirements, but not to another point of storage in the United States. These changes are necessary to bring the SFAR into closer agreement with the long-standing public policy discussed under "Review of Comments" below.

This rule also amends Section 3 of SFAR 47 to require the applicant for a special flight authorization to supply a point of contact and information on the aircraft airworthiness status. Based on experience gained in administering SFAR 47, the provision of this information will reduce or eliminate delays in processing applications for SFAR 47 authorizations.

Effective Date

The final rule is effective January 1, 1987, which is less than 30 days after the date of publication. Such action is necessary for the FAA to have continuous and uninterrupted regulatory authority to grant exemptions (special flight authorizations to operators of qualifying aircraft. The public need to grant these exemptions constitutes good and sufficient cause to waive the normal 30-day waiting period.

Review of Comments

These amendments are based on Notice of Proposed Rulemaking No. 86-12 published in the **Federal Register** on August 18, 1986 (51 FR 29476). Interested persons have been afforded the opportunity to participate in the development of all aspects of this rulemaking by submitting written comments to the public regulatory docket. The period for submitting comments closed October 2, 1986. Five comments were received. They were carefully reviewed and considered in the issuance of this final rule. All five generally supported extension of the SFAR, but each went on to suggest proposed modifications. Four of the five commenters were from the Miami, Florida, area and they suggested allowing unlimited maintenance flights into Miami. The fifth commenter was an airline labor association that suggested extending the life of the SFAR to December 31, 1990.

Concerning maintenance flights to Miami, the FAA believes that such exemptions would provide only some short-term increase in business activity for Miami area certificated repair facilities. Several U.S. and foreign companies (including one in Miami) are currently producing and installing hush-kits for DC-8's and Boeing 707's. As noncomplying aircraft are either retrofitted or scrapped, the economic significance of maintaining the remaining noncompliant aircraft will continue to shrink. At the same time, maintenance activity in support of complying airplanes will increase. More than 100 airplanes operated by U.S. and

foreign operators have been retrofitted to date.

Prior to adopting the original SFAR, the FAA carefully assessed the availability of repair facilities outside the United States for operators of noncomplying aircraft and found that they were entirely adequate to serve those aircraft which needed such service and could not be operated into the United States. Further, Miami is not the only location to which operators wish to fly their aircraft for maintenance. Large maintenance facilities exist at Marana, Arizona, and Smyrna, Tennessee, and requests have been made for exemptions and special flight authorizations to move aircraft to both locations. Other major facilities are located elsewhere in the United States, as well. In this respect, Miami is not unique, and there is no distinguishable rationale for extending SFAR 47 privileges to just that one city.

Finally, there would be a serious problem in administering the large number of special flight authorizations if purely maintenance flights were allowed. Each authorization must be processed and its terms enforced. Since the flights are limited to nonrevenue operations and no cargo or passengers may be carried except those directly concerned with the operation of the aircraft, the FAA's operations inspectors would have to expend substantial time to assure that the provisions of the special flight authorizations were met.

Similarly, the FAA does not agree with the commenter's suggestion to extend SFAR 47 through 1990. Since the original adoption of the FAA's aircraft noise compliance rule, Part 91, Subpart E (14 CFR Part 91) of the Federal Aviation Regulations in 1976, public policy has been to encourage removal of older, noisier airplanes from operations at all U.S. airports. U.S. operation of most noncomplying 3 and 4 engine airplanes became illegal on January 1, 1985. The SFAR is intended to provide a means for ferrying the last few noncompliant aircraft out of the country or to domestic locations for hushkitting; it is not intended to provide a permanent alternative to complying with the Part 91 regulation.

For the reasons discussed above, the FAA has decided not to adopt the commenters suggestions. Otherwise, this amendment and the reasons for its adoption are the same as those contained in Notice 86–12, and, unless otherwise indicated, the proposals contained in the Notice have been adopted without change.

Paperwork Reduction Act

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0518.

Economic Impact

This rule has minimal economic impact. The rule provides an alternative from the exemption process for certain operations, reducing administrative costs upon operators and the FAA. While the operations are not without some noise costs, these costs can be characterized as trivial, since the number of operations at any one local airport will be extremely low in number.

Even though benefits will exceed costs for this proposal, the FAA finds that the SFAR is not likely to have significant economic impact upon a substantial number of small entities. The basis for this is the very low number of requests which FAA foresees as a result of the adoption of this proposal. This number should not exceed fifty over the life of the regulation. Accordingly, preparation of a full regulatory evaluation is not required.

List of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Pilots, Airspace, Air transportation, Airworthiness directives and standards.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), a Finding of No Significant Impact has been prepared. The changes proposed in this rule do not significantly affect the quality of the human environment.

Reason for Immediate Adoption

The timely extension of SFAR 47 will enable the uninterrupted issuance of limited special flight authorizations to permit certain noncomplying operations of noise restricted aircraft which would be unlawful without a formal grant of exemption under FAR Part 11. Because the ability to issue these limited special flight authorizations will expire after December 31, 1986, and because they are very cost beneficial and time efficient to both the government and the private sector, good cause exists to making this amendment effective in less than 30 days.

The Final Rule

Accordingly, the FAA amends Part 91 of the Federal Aviation Regulations (14 CFR Part 91) by amending Special Federal Aviation Regulation (SFAR) 47 as follows; effective January 1, 1987.

PART 91—[AMENDED]

1. The authority citation for Part 91 is revised to read as set forth below and the authority citations following Special Federal Aviation Regulation 47 are removed:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 et seq E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 21, 1983).

2. Paragraph 2(c) is amended by deleting the phrase "the sale, lease, or other disposition of the airplane; and" and substituting the phrase "scrapping the airplane" in its place.

3. Paragraph 2 is amended by deleting subparagraph (d).

4. Paragraph 3 is amended by adding new subparagraphs (h) and (i) to read as follows:

(h) The applicant's name and telephone number.

(i) Whether a special flight permit under FAR Part 21.197 or a special flight authorization under FAR Part 91.28 is required for the proposed flight.

5. Paragraph 5 is amended by deleting the word "1986" and substituting the word "1987" in its place.

The rule has minimal economic consequences. Accordingly, for reasons stated earlier the FAA had determined that: (1) The amendment does not involve a major rule under Executive Order 12291; (2) the amendment is not significant, and, because of its minimal economic consequence, it does not require a full Regulatory Evaluation under DOT Regulatory Polices and Procedures (44 FR 11034, February 26, 1979); and (3) it is certified that under the criteria of the Regulatory Flexibility Act that the amendment will not have significant economic impact on a substantial number of small entities. In addition, this rule will have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the United States.

Issued in Washington, DC, December 24, 1986.

Donald D. Engen,

Administrator.

[FR Doc. 86-29362 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25156; Amdt. No. 1336]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for such SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters, Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates states as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on December 12, 1986.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: Section 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/

DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective February 12, 1987

Santa Maria, CA—Santa Maria Public, VOR RWY 12, Amdt. 13
Joliet, IL—Joliet Park District, VOR RWY 12, Amdt. 10
Joliet, IL—Joliet Park District, RNAV RWY 12, Amdt. 11
Moline, IL—Quad-City, RADAR-1, Amdt. 7
Moline, IL—Quad-City, RNAV RWY Amdt. 8
Auburn, IN—Auburn Dekalb, VOR-A, Amdt. 7
Auburn, IN—Auburn Dekalb, VOR RWY 9, Amdt. 6
Fort Wayne, IN—Smith Field, VOR RWY 13, Amdt. 7
Kendallville, IN—Kendallville Muni, VOR-A, Amdt. 4
Nappanee, IN—Nappanee Muni, VOR/DME-A, Amdt. 3
Warsaw, IN—Warsaw Muni, VOR RWY 9, Amdt. 3
Warsaw, IN—Warsaw Muni, VOR RWY 27, Amdt. 3
Warsaw, IN—Warsaw Muni, SDF RWY 9, Amdt. 2
Lake Charles, LA—Lake Charles Muni, LOC BC RWY 33, Amdt. 16
Grand Forks, ND—Grand Forks-Mark Andrews Intl, VOR RWY 17R, Amdt. 4
Grand Forks, ND—Grand Forks-Mark Andrews Intl, VOR RWY 35L, Amdt. 5
Grand Forks, ND—Grand Forks-Mark Andrews Intl, LOC BC RWY 17R, Amdt. 10
Grand Forks, ND—Grand Forks-Mark Andrews Intl, ILS RWY 35L, Amdt. 9

. . . Effective January 15, 1987

Camden, AR—Harrell Field, VOR/DME RWY 36, Amdt. 6
Camden, AR—Harrell Field, NDB RWY 18, Amdt. 9
Dumas, AR—Billy Free Municipal, VOR/DME RWY 36, Amdt. 1
Merced, CA—Merced Muni, VOR RWY 12, Amdt. 5
Merced, CA—Merced Muni, LOC BC RWY 12, Amdt. 7
San Diego, CA—San Diego Intl-Lindbergh Field, LOC RWY 27, Amdt. 2
San Diego, CA—San Diego Intl-Lindbergh Field, NDB RWY 27, Amdt. 1
Indianapolis, IN—Indianapolis Intl, NDB RWY 31, Amdt. 12
Indianapolis, IN—Indianapolis Intl, ILS RWY 31, Amdt. 15
Bastrop, LA—Morehouse Memorial, VOR/DME-A, Amdt. 7
Bastrop, LA—Morehouse Memorial, NDB RWY 34, Amdt. 4
Lafayette, LA—Lafayette Regional, NDB RWY 21, Amdt. 2
New Orleans, LA—Lakefront, VOR-B, Amdt. 7
New Orleans, LA—New Orleans Intl (Moisant Field), LOC BC RWY 19, Amdt. 10
Fitchburg, MA—Fitchburg Muni, NDB RWY 32, Orig. CANCELLED
Fitchburg, MA—Fitchburg Muni, NDB-A, Orig.
Cortland, NY—Cortland County-Chase Field, VOR RWY 6, Amdt. 1
Pittsburgh, PA—Greater Pittsburgh Intl, ILS RWY 10R, Amdt. 3
Chester, SC—Chester Muni, VOR/DME RWY 23, Amdt. 3, CANCELLED
Chester, SC—Chester Muni, VOR/DME-A, Orig.
Brownwood, TX—Brownwood Muni, VOR RWY 17, Amdt. 9
Brownwood, TX—Brownwood Muni, LOC RWY 17, Amdt. 2
Pecos City, TX—Pecos Muni, VOR RWY 13, Amdt. 6
Newport News, VA—Patrick Henry Intl, ILS RWY 7, Amdt. 27
Bluefield, WV—Mercer County, ILS RWY 23, Amdt. 10

. . . Effective December 4, 1986

Southern Pines, NC—Moore County, VOR-A, Amdt. 1

. . . Effective December 3, 1986

Bakersfield, CA—Meadows Field, ILS RWY 30R, Amdt. 25

. . . Effective December 6, 1986

Jacksonville, TX—Cherokee County, VOR/DME RWY 13, Amdt. 1

[FR Doc. 86-29364 Filed 12-30-86; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79-14]

Natural Gas Policy Act; Incremental Pricing

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8500.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of January, 1987 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The incremental pricing thresholds for January, 1987 reflect a two-month lag adjustment described in the notice of the March 1, 1986 thresholds.

List of Subjects in 18 CFR Part 282

Natural gas.

Issued: December 23, 1986.

Richard P. O'Neill,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

CALENDAR YEAR 1986

	January	February	March	April	May	June	July	August	September	October	November	December
Incremental pricing threshold	$2.460	$2.467	$2.474	$2.481	$2.487	$2.493	$2.499	$2.504	$2.509	$2.514	$2.522	$2.530
NGPA section 102 threshold	4.166	4.191	4.216	4.241	4.264	4.287	4.310	4.332	4.354	4.376	4.403	4.431
NGPA section 109 threshold	2.539	2.546	2.553	2.560	2.566	2.572	2.578	2.583	2.588	2.593	2.601	2.609

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES—Continued

CALENDAR YEAR 1986

	January	February	March	April	May	June	July	August	September	October	November	December
130 pct. of No. 2 fuel oil in New York City threshold	7.730	7.930	5.040	5.290	4.680	3.980	3.800	3.190	3.310	4.020	3.320	3.240

Calendar year 1987

	January
Incremental pricing threshold	$2.538
NGPA section 102 threshold	$4.459
NGPA section 109 threshold	2.617
130 pct. of No. 2 fuel oil in New York City threshold	4.09

[FR Doc. 86-29264 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 83F-0258]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of di-*n*-alkyl(C_8–C_{10})dimethylammonium chloride, *n*-alkyl(C_{12}–C_{18})benzyldimethylammonium chloride, tetrasodium ethylenediamine tetraacetate, and either *alpha*-alkyl(C_{11}–C15)-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide or *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide, as components of a sanitizing solution to be used on food-contact surfaces. This action responds to a petition filed by Lonza, Inc.

DATES: Effective December 31, 1986; objections by January 30, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 8, 1983 (48 FR 40562), FDA announced that a petition (FAP 3H3735) had been filed by Lonza, Inc., Fair Lawn, NJ 07410, proposing that the food additive regulations be amended to provide for the safe use of di-*n*-alkyl(C_8–C_{10})dimethylammonium chloride, *n*-alkyl(C_{12}–C_{18})benzyldimethylammonium chloride, tetrasodium ethylenediamine tetraacetate, and either *alpha*-alkyl-(C_{11}– C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide or *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide, as components of a sanitizing solution to be used on food-contact surfaces.

FDA reviewed the safety of the individual food additives that are components of the sanitizing solution, as well as the safety of the starting materials used to manufacture the food additives. Although di-*n*-alkyl(C_8–C_{10})dimethylammonium chloride, *n*-alkyl(C_{12}–C_{18})benzyldimethylammonium chloride, tetrasodium ethylenediamine tetraacetate, and the ethoxylated emulsifiers, *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide and *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly (oxyethylene with 9 to 13 moles of oxyethylene, have not been shown to cause cancer, the ethoxylated emulsifiers may contain minute amounts of ethylene oxide and 1,4-dioxane as byproducts of their production. These chemicals have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as ethylene oxide and 1,4-dioxane, are commonly found as contaminants in chemical products, including most food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstances." H. Rept. 2284, 85th Cong., 2d Sess. 4 (1958). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve a use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain a carcinogenic chemical but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6 published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic constituent.

Since that decision, FDA has approved the use of other color additives and food additives on the same basis. FDA fully explained the scientific, legal, and policy underpinnings for these decisions in the advance notice of proposed rulemaking on a policy for regulating carcinogenic chemicals in food and color additives, published in the **Federal Register** of April 2, 1982 (47 FR 14464).

The agency now believes that the Delaney or anticancer clause is not applicable unless the food additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer, but that contains a carcinogenic constituent, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984).

That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use of the Additives

Sanitizing solutions are mixtures of additives in which each additive has a functional effect. The subject sanitizing solution contains two quaternary salts, (di-*n*-alkyl(C_8–C_{10})dimethylammonium chloride and *n*-alkyl(C_{12}–C_{18})-benzyldimethylammonium chloride), which are the active sanitizing agents; tetrasodium ethylenediamine tetraacetate, which functions as a chelating agent and also serves to lyse the bacteria; and one of the ethoxylated compounds, *alpha*-alkyl- (C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide or *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide, which function as emulsifiers and aid in the penetration of bacterial cells by the active ingredients.

A. Quaternary Ammonium Compounds

The two quaternary active ingredients in the subject sanitizing solution, di-*n*-alkyl(C_8–C_{10})dimethylammonium chloride and *n*-alkyl(C_{12}–C_{18})benzyldimethylammonium chloride, are used in currently regulated sanitizing solutions. These sanitizing solutions are listed in 21 CFR 178.1010(b)(16), (17), (18), (22), and (23). On the basis of the data submitted in support of these currently regulated uses and of the data contained in the food additive petition submitted in support of this sanitizing solution, FDA finds that the use of these quaternary ammonium compounds in the subject sanitizing solution is safe and effective.

B. Tetrasodium Ethylenediamine Tetraacetate

Tetrasodium ethylenediamine tetraacetate is used as an active ingredient in the sanitizing solution listed in 21 CFR 178.1010(b)(16). It is also regulated by FDA for use as a secondary direct food additive in 21 CFR 173.310 and 173.315. Based upon the agency's evaluation of safety and efficacy data available in this petition and submitted in support of the other listed uses of this additive, the agency concludes that tetrasodium ethylenediamine tetraacetate is safe and effective at the use levels set forth in this regulation.

C. Ethoxylated Emulsifier

FDA estimates that the petitioned use of *alpha*-alkyl-(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide and *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) formed from 9 to 13 moles of ethylene oxide will result in extremely low levels of exposure to these additives. The agency has calculated an estimated daily intake of *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide, or the alternative, *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of oxyethylene, based on considerations such as the migration of the additive under the most severe intended use conditions and the probable concentration of the additive in the daily diet from food-contact articles that contain these substances as a result of use of the sanitizing solution. The estimated daily intake for the additive (or the alternative) is 90 micrograms per person per day (0.03 part per million in the diet).

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in low exposure levels (Refs. 1 and 2) and has not required such testing here. Because these ethoxylated emulsifiers have not been shown to cause cancer, the anticancer clause does not apply to them.

The available data also revealed no adverse effect from *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide or *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene). However, these additives may contain 1,4-dioxane and ethylene oxide, substances that have been shown to cause cancer in test animals. Impurities such as 1,4-dioxane and ethylene oxide may be present as a result of manufacturing procedures used to produce these emulsifiers.

FDA has evaluated the safety of the ethoxylated additives under the general safety clause, using risk assessment procedures to estimate the upper bound risk presented by the 1,4-dioxane and ethylene oxide that may be present as impurities in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018, 13019; April 2, 1984). This risk evaluation of the carcinogenic impurities ethylene oxide and 1,4-dioxane has two aspects: (1) Assessment of the worst case exposure to the impurities from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

1. 1,4-Dioxane

Based on the fraction of the daily diet that may be in contact with surfaces containing *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide or *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide, as well as the level of 1,4-dioxane that may be present in these additives (Ref. 5), FDA estimated the hypothetical worst case exposure to 1,4-dioxane from the use of these additives to be 2 nanograms per person per day. The agency used data in a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute (Ref. 4) to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of the ethoxylated emulsifiers in the sanitizing solution. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The committee further concluded that an estimate of the upper bound risk from potential exposure to 1,4-dioxane stemming from the proposed use of the ethoxylated emulsifiers could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the

estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the ethoxylated emulsifiers. Based on a worst case exposure of 2 nanograms per person per day, FDA estimates the upper bound limit of individual lifetime risk from potential exposure to 1,4-dioxane from the use of these ethoxylated emulsifiers is 7×10^{-11} or less than 7 in 100 billion. Because of the numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and therefore the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1,4-dioxane that results from the use of these ethoxylated emulsifiers.

2. Ethylene Oxide

Based on the fraction of the daily diet that may be in contact with surfaces containing the ethoxylated emulsifiers *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide and *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide, as well as levels of ethylene oxide that may be present in the additive (Ref. 5), FDA estimated the hypothetical worst case exposure to ethylene oxide from the use of these ethoxylated emulsifiers to be 2 nanograms per person per day. The agency used data in a carcinogenesis bioassay on ethylene oxide conducted for the Institute of Hygiene, University of Mainz, West Germany (Ref. 3), to estimate the upper bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of these ethoxylated emulsifiers. The results of the bioassay on ethylene oxide demonstrated that this material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidences of squamous cell carcinoma of the forestomach and carcinoma in situ of the glandular stomach.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed the bioassay and other relevant data available in the literature and concluded that this information on ethylene oxide supported the finding of carcinogenicity. The committee further concluded that an estimate of the upper bound limit of lifetime human cancer risk from potential exposure to ethylene oxide could be made from the bioassay.

Based on a worst case exposure of 2 nanograms per person per day, FDA estimates, using a linear proportional model, that the upper bound limit of individual lifetime risk from potential exposure to ethylene oxide from the use of *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide and *alpha*-(*p*-nonylphenyl)*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide, is 4×10^{-9} or less than 4 in 1 billion. Because of the numerous conservatisms in the exposure estimate, lifetime averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that results from the use of the ethoxylated emulsifiers *alpha*-alkyl(C_{11}–C_{15})-*omega*-hydroxypoly(oxyethylene) with 9 to 13 moles of ethylene oxide and *alpha*-(*p*-nonylphenyl)-*omega*-(*p*-hydroxypoly(oxyethylene) formed with 9 to 13 moles of ethylene oxide.

D. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of the ethylene oxide and 1,4-dioxane impurities in the ethoxylated emulsifiers. The agency finds that a specification is not necessary for the following reasons: (1) Because of the levels at which ethylene oxide and 1,4-dioxane are used in the production of these additives, the agency would not expect these impurities to become components of food at other than extremely small levels; and (2) the upper bound limit of lifetime risk from exposure, even under worst case assumptions, is very low, less than 7 in 100 billion for 1,4-dioxane and less than 4 in 1 billion for ethylene oxide.

E. Conclusion of Safety

FDA has evaluated the available toxicity data and the exposure calculation for the components of the sanitizing solution and has determined that they are safe for their proposed use.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday:

1. Carr, G.M., "Carcinogenicity Testing Programs" *in* "Food Safety: Where Are We?" Committee on Agriculture, Nutrition, and Forestry, United States Senate, July 1979, p. 59.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology" presented at the "Second International Conference on Safety Evaluation and Regulation of Chemicals," October 24, 1983, Cambridge, MA.

3. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

5. Memorandum dated February 13, 1986, from Food Additive Chemistry Evaluation Branch to Indirect Additives Branch, "Exposure to Ethylene Oxide (EO) and 1,4-Dioxane (DX)."

Objections

Any person who will be adversely affected by this regulation may at any time on or before January 30, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall

include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.1010 is amended by adding new paragraphs (b)(33) and (c)(28) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(33) An aqueous solution containing (i) di-*n*-alkyl-(C_8-C_{10})-dimethylammonium chloride compounds having average molecular weights of 332 to 361; (ii) *n*-alkyl(C_{12}-C_{18})-benzyldimethylammonium chloride compounds having molecular weights of 351 to 380 and consisting principally of alkyl groups with 12 to 16 carbon atoms with no more than 1 percent of the groups with 8 to 10; and (iii) tetrasodium ethylenediamine tetraacetate. Additionally, the aqueous solution contains either *alpha*-(*p*-nonylphenyl)-*omega*-hydroxypoly-(oxyethylene) or *alpha*-alkyl(C_{11}-C_{15})-*omega*-hydroxypoly-(oxyethylene), each produced with 9 to 13 moles of ethylene oxide. The ratio of compound (i) to compound (ii) is 3 to 2.

(c) * * *

(28) Solutions identified in paragraph (b)(33) of this section shall provide, when ready to use, at least 150 parts per million and not more than 400 parts per million of active quaternary compounds. The adjuvants used with the quaternary compounds shall not exceed the amounts required to accomplish the intended technical effect. Tetrasodium ethylenediamine tetraacetate shall be added at a minimum level of 60 parts per million. Use of these sanitizing solutions shall be limited to conditions of water hardness not in excess of 300 parts per million.

Dated: December 22, 1986.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–29214 Filed 12–30–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2509, 2510, and 2550

Final Regulation Relating to Definition of Plan Assets; Corrections

AGENCY: Department of Labor.

ACTION: Final regulation; corrections.

SUMMARY: The Department of Labor is correcting the final regulation relating to the definition of plan assets which appeared in the Federal Register on November 13, 1986 (51 FR 41262).

FOR FURTHER INFORMATION CONTACT: Daniel J. Maguire, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523–9595.

SUPPLEMENTARY INFORMATION: On November 13, 1986, the Department of Labor promulgated a final regulation that describes what constitute assets of a plan for purposes of certain provisions of Title I of the Employee Retirement Income Security Act of 1974 and the related prohibited transaction provisions of the Internal Revenue Code (51 FR 41262). By this notice, the Department is making two corrections to this regulation which are described below.

Corrections

The following corrections are made in the final regulation relating to the definition of plan assets published in the Federal Register on November 13, 1986 (51 FR 41262).

1. Line 10 of paragraph (e) of § 2510.3–101 which appears in the second column on page 41282 is revised by adding the phrase "for the 12 month period following" after the word "or" in that line so that the introductory material in paragraph (e) reads as follows:

§ 2510.3–101 [Corrected]

* * * * *

(e) *"Real estate operating company".* An entity is a "real estate operating company" for the period beginning on an initial valuation date described in paragraph (d)(5)(i) and ending on the last day of the first "annual valuation period" described in paragraph (d)(5)(ii) (in the case of an entity that is not a real estate operating company immediately before the determination) or for the 12 month period following the expiration of an annual valuation period described in paragraph (d)(5)(ii) (in the case of an entity that is a real estate operating company immediately before the determination) if:

* * * * *

2. Line 15 of paragraph (k)(1) of § 2510.3–101 which appears in the third column on page 41284 which reads, "March 13, 1987 with an issuer of" is revised to read as follows: "March 13, 1987 with an issuer or".

Signed at Washington, DC, this 19th day of December 1986.

Dennis M. Kass,

Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–29334 Filed 12–30–86; 8:45 am]

BILLING CODE 4510–29–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2622

Employer Liability Underpayments and Overpayments; Change in Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment sets forth the interest rates applicable to employer liability underpayments and overpayments beginning January 1, 1987. The affected regulation incorporates the interest rates determined by another Federal agency. This amendment is being made to respond to a change in the timing and method of computing the interest rates brought about by the Tax Reform Act of 1986 and to add the new rates to the regulation's Appendix. This amendment is needed to notify pension plan administrators and plan sponsors of these changes.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT: John Foster, Attorney, Corporate Policy and Regulations Department, Code

35100, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202–778–8850 (2020–778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects employer liability from those persons described in ERISA section 4062(a) upon the termination of a single-employer pension plan without sufficient assets to pay all guaranteed benefits. Under § 2622.7 of the PBGC's employer liability regulation, interest on underpayments or overpayments of employer liability is charged or credited at the rate prescribed in section 6601(a) of the Internal Revenue Code ("Code").

Section 6601(a) provides for an interest rate determined under section 6621 of the Code. In the past, this rate has been semiannually adjusted, based on the average prime interest rate for the six month periods ending on September 30 and March 31. The rate would be effective January 1 or July 1 of the succeeding year, as applicable.

The Tax Reform Act of 1986 ("TRA"), however, changes the way the interest rate in section 6601(a) is computed and establishes differential rates of interest on underpayments and overpayments. Under TRA, the underpayment rate is the short-term Federal rate plus three percentage points; the interest rate on overpayments is the same Federal rate plus two percentage points. The short-term Federal rate, which is based on the three-month Treasury bill rate, is determined during the first month of a calendar quarter and the new rate is effective for the following calendar quarter.

On December 2, 1986, the Internal Revenue Service announced that for the calendar quarter beginning January 1, 1987, interest will be charged on underpayments at the rate of nine percent and paid on overpayments at the rate of eight percent (IR–86–163). Therefore, in accordance with 29 CFR 2622.7, the interest rate thereunder on underpayments will be nine percent for the three-month period beginning on January 1, 1987 and ending on March 31, 1987. The PBGC will pay an interest rate of eight percent on overpayments of employer liability for the same time period. These rates will continue in effect until such time as the IRS, in its quarterly reviews, changes the rates.

The interest rates used under the employer liability regulation are set forth in Appendix A to Part 2622. Because previously the section 6601(a) interest rate was a single rate applicable to both underpayments and overpayments of employer liability, the PBGC is amending Appendix A to Part 2622 to close out the table that is based on the pre-TRA single interest rate and to add a new table that provides for different interest rates for underpayments and overpayments. In the near future, the PBGC plans to conduct a new rulemaking proceeding to determine whether it should, in light of the TRA changes, continue to use the section 6601(a) rates under the employer liability regulation or whether it should adopt a new rate(s) for that purpose.

With respect to the late payment of premiums under 29 CFR Part 2610, the PBGC also uses the section 6601(a) interest rate, as mandated by ERISA section 4007(b). No action is required under that regulation, however, because the nine percent interest rate in effect for the July 1–December 31, 1986 time period is the same interest rate that will be in effect on January 1, 1987.

Because the interest rates prescribed by Part 2622 are those established by the Internal Revenue Service under Code section 6601(a), and the Appendix to Part 2622 merely collects and republishes those rates, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the same reasons, the PBGC also finds that good cause exists for making this amendment effective without the 30-day waiting period set forth in 5 U.S.C. 553.

The PBGC also had determined that this rule 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; nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions; nor will it have significant adverse effects on competition, employment, investment, innovation, or 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 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, Small businesses.

In consideration of the foregoing, Appendix A to Part 2622 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

1. The authority citation for Part 2622 continues to read as follows:

Authority: Secs. 4002(b)(3), 4062, 4063, 4064, 4067, 4068, Pub. L. 93–406, 88 Stat. 829, 1004, 1029, 1030, 1031, 1032, as amended by secs. 403(1), 403(g), 403(h), 403(i), Pub. L. 96–364, 94 Stat. 1208, 1301, 1302, and by sec. 11011, 11016, Pub. L. 99–272, 100 Stat. 82, 253, 268 (29 U.S.C. 1302(b)(3), 1362, 1363, 1364, 1367, 1368).

2. Appendix A to Part 2622 is amended by revising the title and adding a closing date entry to July 1, 1986, and by adding a new table to the appendix as follows:

Appendix A—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

TABLE I.—LATE PAYMENT AND OVERPAYMENT INTEREST RATES THROUGH DEC. 31, 1986

From	Through	Interest rate (pct)
* * * * *		
July 1, 1986	Dec. 31, 1986	9

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

TABLE II.—LATE PAYMENT AND OVERPAYMENT INTEREST RATES AFTER DEC. 31, 1986

From	Through	Interest rate	
		Underpayment (pct)	Overpayment (pct)
Jan. 1, 1987		9	8

Issued in Washington, D.C., the 24th day of December 1986.

Royal S. Dellinger,

Acting Executive Director.

[FR Doc. 86–29306 Filed 12–30–86; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 855

Use of United States Air Force Installations by Other Than United States Department of Defense Aircraft

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: This regulation establishes the responsibilities and describes the procedures for the use of United States Air Force installations by aircraft other than U.S. Department of Defense aircraft.

EFFECTIVE DATE: January 30, 1987.

ADDRESS: HQ USAF/PRPJ, Washington DC 20330–5000.

FOR FURTHER INFORMATION CONTACT: Ms. R.A. Young, HQ USAF/PRPJ, Washington, DC 20330–5000, telephone (202) 697–1796.

SUPPLEMENTARY INFORMATION: On November 13, 1986, the Department of the Air Force published a proposed rule on procedures for the use of United States Air Force installations by aircraft other than U.S. Department of Defense aircraft (51 FR 41121). No comments were received.

The Department of the Air Force has determined that this regulation is not a major rule as defined by Executive Order 12291 and is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354). DD Forms 2400, 2401 and 2402 contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), and have been approved by the Office of Management and Budget (OMB) under control number 0701–0050.

List of Subjects in 32 CFR Part 855

Aircraft, Federal buildings and facilities.

Accordingly, 32 CFR, Chapter VII, is amended by revising Part 855 as set forth below:

PART 855—USE OF UNITED STATES AIR FORCE INSTALLATIONS BY OTHER THAN UNITED STATES DEPARTMENT OF DEFENSE AIRCRAFT

Sec.

855.0 Purpose.

Subpart A—General Provisions

855.1 U.S. Air Force policy.
855.2 Definitions.
855.3 Aircraft exempt from the requirement for a civil aircraft landing permit or aircraft landing authorization number.

Subpart B—Unauthorized Landings

855.4 Unauthorized landings.
855.5 Emergency landings.
855.6 Inadvertent unauthorized landings.
855.7 Intentional unauthorized landings.

Subpart C—Civil Fly-In Procedures

855.8 Civil fly-ins.
855.9 Civil fly-in procedures.

Subpart D—Civil Aircraft

855.10 Condition for use of U.S. Air Force installations.
855.11 Types of civil use.
855.12 Approving authority.
855.13 Application procedures.
855.14 Processing procedures.
855.15 Insurance requirements.
855.16 Landing, parking, and storage fees.
855.17 Aviation fuel and oil purchases.
855.18 Supply and service charges.

Subpart E—Foreign Government Aircraft

855.19 General information.
855.20 Application procedures.
855.21 Processing procedures.
855.22 Approving authority.
855.23 Aviation fuel and oil purchases.
855.24 Foreign military sales (FMS) cargo.
855.25 Supply and service charges.
855.26 Landing, parking, and storage fees.
855.27 Waiver authority.

Subpart F—Joint-Use of a U.S. Air Force Installation

855.28 U.S. Air Force joint-use policy.
855.29 Procedures for sponsor.
855.30 Procedures for U.S. Air Force.

Authority: 10 U.S.C. 8012, 49 U.S.C. 1507.

§ 855.0 Purpose.

This part establishes the responsibilities and describes the procedures for the use of United States (U.S.) Air Force installations by aircraft other than U.S. Department of Defense (DOD) aircraft pursuant to section 1107 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1507). This part applies to all regular U.S. Air Force, Air National Guard, and U.S. Air Force Reserve installations with airfields. Major commands (MAJCOM) or separate operating agencies (SOA) may issue supplements to establish command-unique procedures permitted by and consistent with this part.

Subpart A—General Provisions

§ 855.1 U.S. Air Force policy.

U.S. Air Force policy is to permit civil aircraft use of U.S. Air Force airfields to the maximum extent feasible on an equitable basis. However, U.S. Air Force installations are established to facilitate the training required to maintain defense readiness and to provide the operational capacity necessary to defend the U.S.; therefore, careful consideration must be given to those external influences which could impair operational capabilities. U.S. Air Force requirements will take precedence over authorized civil aircraft use. This part carries the force of U.S. law, and exceptions are not authorized without prior appproval of HQ USAF/PRPJ. Any proposed exception or waiver will be evaluated as to current and future impact on U.S. Air Force policy and operations.

(a) The U.S. Air Force:

(1) Determines whether civil aircraft use of U.S. Air Force installations is compatible with current or future military activities.

(2) Normally authorizes civil aircraft use of U.S. Air Force installations only for flights operating in conjunction with official government business or where a formal joint-use agreement exists (Subpart F). However, if exceptional circumstances warrant, other types of use may be authorized. Federal Aviation Administration (FAA) certification is required for airfields used by carriers certified under Federal Aviation Regulation (FAR), Part 121 (passenger aircraft which exceed 30 passenger seats or cargo aircraft with a maximum certified takeoff weight over 12,500 pounds). HQ USAF/PRPJ will request that FAA issue an airport operating certificate under FAR, Part 139, as necessary. Exceptions to the requirement for certification are U.S. Air Force airfields used for:

(i) Emergencies.

(ii) Weather alternates.

(iii) Air taxi operations under FAR, Part 135.

(iv) Air carrier operations in support of contract flights exclusively for the DOD.

(3) Subject to the laws and regulations of the U.S., or to applicable international agreements with the country in which the U.S. Air Force installation is located, acts as clearing authority for civil aircraft use of U.S. Air Force installations.

(4) Reserves the right to suspend any operation which is inconsistent with national defense interests or deemed not in the best interests of the U.S. Air Force.

(5) Will terminate authorization to use a U.S. Air Force installation if the:

(i) User's liability insurance is cancelled.

(ii) User is reported as operating for other than the approved purpose, or otherwise in violation of this regulation or clearances and directives hereunder.

(6) Will not authorize civil use of U.S. Air Force installations:

(i) In substantial competition with civil airports by providing services or faciities which are already available in the private sector.

(ii) Solely for the convenience of passengers or aircraft operator.

(iii) Solely for transient aircraft servicing.

(iv) For private enterprise which promotes, benefits, or favors a specific commercial venture.

(v) For unsolicited proposals in procuring government business or contracts.

(vi) Solely for customs handling purposes.

(7) Will not authorize civil aircraft to operate at a closed U.S. Air Force airfield.

(8) Will not authorize civil aircraft use of U.S. Air Force ramps located on civil airfields. This paragraph does not apply to use of U.S. Air Force aero club facilities located on civil airfields (§855.11(i) of this part) or civil aircraft chartered by DOD and authorized use of loading or unloading facilities on the Air Force ramp (§ 855.11 (k) and (n) of this part).

(b) All civil aircraft operators must:

(1) Obtain prior authorization to land at U.S. Air Force installatons, except in an emergency or at bases specifically exempted by joint-use or international agreements.

(2) Ensure that pavement load-bearing capacity at installations requested for use will support aircraft to be operated.

(3) Have aircraft equipped with operating two-way radio equipment to obtain landing clearance from the air traffic control tower.

(4) Not assume that landing clearance granted by an air traffic control tower facility constitutes prior authorization.

(5) Obtain required diplomatic or overflight clearance.

(6) Pay applicable costs.

(7) File a flight plan before departing the U.S. Air Force installation.

(c) The installation commander:

(1) Exercises administrative and security control over both the aircraft and passengers while on the installation.

(2) May require civil users to delay, reschedule, or reroute arrivals or departures to preclude interference with military activities.

(3) Cooperates with customs, immigration, health, and other public authorities in connection with aircraft arrival and departure.

§855.2 Definitions.

(a) *Aircraft.* Any contrivance now known or hereafter invented, used, or designated for navigation of or flight in navigable airspace as defined in the Federal Aviation Act.

(b) *Airfield facilities.* Runways, taxiways, parking and servicing areas, air traffic control facilities, base operations, navigation aids, aircraft fire suppression and rescue services, and airfield lighting and aircraft arresting systems.

(c) *Authorized credit letter.* A letter of agreement which qualified operators must file with the U.S. Air Force to purchase U.S. Air Force aviation fuel and oil on a credit basis under the provisions of AFR 144–9.

(d) *Civil aircraft.* Any U.S. or foreign-registered aircraft owned by private individuals or corporations, and foreign government-owned aircraft which are operated for commercial purposes.

(e) *Civil aviation.* All flying activity by civil aircraft of any national registry, including:

(1) *Commercial aviation.* Civil aviation involving transportation of passengers or cargo for hire.

(2) *General aviation.* Civil aviation not involving the transportation of passengers or cargo for hire.

(f) *Civil fly-in.* Civil aircraft participation in U.S. Air Force sponsored or funded events such as, but not limited to, an open house or a safety seminar.

(g) *Closed airfield.* An airfield which is restricted from use by all aircraft.

(h) *DD Form 2400, Civil Aircraft Certificate of Insurance.* A certificate which states the amount of third-party liability insurance carried by the user and assures the U.S. government of advance notice of changes in the terms of coverage or policy cancellation.

(i) *DD Form 2401, Civil Aircraft Landing Permit.* An application which, when validated by a U.S. Air Force approving authority, authorizes the civil operator to use the installation under the terms of this regulation.

(j) *DD Form 2402, Civil Aircraft Hold Harmless Agreement.* An agreement, executed by the user, which releases the U.S. government from all liabilities incurred in connection with civil aircraft use of U.S. Air Force installations.

(k) *Government aircraft.* Aircraft owned, operated, or controlled for exclusive, long-term use by any department or agency of either the U.S. or a foreign government; and aircraft owned by any U.S. state, county, municipality or other political subdivision; or any aircraft for which a government has the liability responsibility. In the context of this regulation, this also includes foreign registered aircraft, which are normally commercially operated, that have been wholly chartered for use by foreign government heads of state for official state visits.

(l) *Government furnished or bailed aircraft.* U.S. government-owned aircraft provided to a government contractor for use in conjunction with a specific contractual requirement.

(m) *Installation commander.* An officer who commands a host support unit, host wing, or higher level host unit and has been identified by administrative order or command directive as "installation commander." He or she discharges the duties directed by U.S. statues or U.S. Air Force directives to be performed by the "installation commander."

(n) *Joint-use installation.* A U.S. Air Force installation where a specific written agreement exists between the U.S. Air Force and a local U.S. or foreign government agency for civil aviation use of U.S. Air Force controlled runways, taxiways, and other necessary facilities.

(o) *Loaned aircraft.* U.S. government-owned aircraft made available for use by another U.S. government agency or to a U.S. Air Force aero club. This does not include aircraft leased or loaned to nongovernmental entities which are treated as civil aircraft for purposes of this regulation.

(p) *Military aircraft.* Aircraft used exclusively in the military services of the U.S. or a foreign government and bearing appropriate military and national markings or carrying appropriate identification.

(q) *Official government business.* Activity in support of U.S. federal agencies located at or in the immediate vicinity of a U.S. Air Force installation, including non-appropriated fund activities. For elected or appointed federal, state, and local officeholders, official business is activity performed in fulfilling duties as a public official.

(r) *Public agency.* A state, or agency of a state, a municipality, or other political subdivision of a state, a tax supported organization, or Indian tribe or pueblo.

(s) *Unauthorized landing.* A landing at a U.S. Air Force installation by a civil aircraft operator, including both general and commercial aviation, who has not received prior authorization as required in § 855.10 of this part.

(t) *U.S. Air Force installation.* A defined area of real property for which the U.S. Air Force has operational jurisdiction and exclusive use of the airfield facility either by ownership, lease, or international agreement.

(u) *User.* The person, corporation, or other responsible entity operating civil aircraft at U.S. Air Force installations.

(v) *Weather alternate airport.* A U.S. Air Force installation used as a weather alternative airport as prescribed by Federal Aviation Regulations (FAR), international agreement, or other directives.

(Reporting and recordkeeping requirements in paragraphs (h), (i), and (j) were approved by the Office of Management and Budget under control number 0701–0050)

§ 855.3 Aircraft exempt from the requirements for a civil aircraft landing permit or aircraft landing authorization number.

(a) Any aircraft owned and operated by:

(1) Any other U.S. government agency.

(2) U.S. Air Force aero clubs established as prescribed in AFR 215–12.

(3) Aero clubs of other U.S. military services.

(4) A U.S. state, county, municipality, or other political subdivision, when operated to support official business at any level of government.

(b) Any civil aircraft under:

(1) Lease or contractual agreement for exclusive U.S. government use on a long-term basis and operated on official business by or for a U.S. government agency; for example, the FAA, Department of Interior, or Department of Energy. (The government normally holds liability responsibility for the aircraft.)

(2) Lease or contractual agreement to the U.S. Air Force for U.S. Air Force Civil Air Patrol (CAP) liaison purposes and operated by a U.S. Air Force CAP liaison officer on official U.S. Air Force business.

(3) CAP control for a specific mission directed by the U.S. Air Force.

(4) Contractual agreement to any U.S., state, or local government agency in support of operations involving safety of life or property as a result of a disaster.

(5) Government furnished property or bailment contract for use by a contractor, provided the federal, state, or local government has retained liability responsibilities.

(c) Civil aircraft transporting critically ill or injured individuals to or from a U.S. Air Force installation.

(d) Foreign government-owned aircraft falling within the purview of international reciprocal use agreements.

(e) Historic aircraft delivered to U.S. Air Force museums under the provisions of AFR 210–4.

Subpart B—Unauthorized landings

§ 855.4 Unauthorized landings.

The installation commander will identify an unauthorized landing as either an emergency landing, an inadvertent landing, or an intentional landing. An Unauthorized landing may be designated as inadvertent or intentional whether or not the operator has knowledge of the provisions of this regulation and whether or not the operator filed a flight plan identifying the installation as a destination. On all unauthorized landings, the aircraft should be allowed minimum ground time and the installation commander:

(a) Briefs the operator on this part and the FAA requirement for reporting the incident.

(b) Has the operator prepare a circumstantial report, sign DD Form 2402, and pay applicable charges. (In some instances, it may be necessary to arrange to bill the user for the appropriate charges.) DD Form 2402 need not be completed for commercial carriers if it is known the form is already on file at HQ USAF/PRPJ.

(c) After compliance with preceding requirements, directs the operator to depart the installation.

(d) In the U.S. or its possessions, notifies the nearest FAA general aviation district office for incidents involving general aviation and the air carrier district office for incidents involving air carriers.

(e) Within a foreign country, notifies appropriate U.S. Defense Attache Office (USDAO) in the country of aircraft registration. Providers an information copy of the report to the civil aviation authority of the country concerned.

(f) Prepares a report on the landing and submits the report with supporting documentation through channels to HQ USAF/PRPJ, Washington, DC 20330–5248.

§ 855.5 Emergency landings.

Any aircraft operator who experiences an inflight emergency may land at any U.S. Air Force installation without prior authorization. An inflight emergency is defined as a situation which makes continued flight hazardous.

(a) The U.S. Air Force will use any method or means to clear an aircraft or wreckage from the runway to preclude interference with essential military operations. Removal efforts should minimize damage to the aircraft or wreckage; however, military or other operational factors may be overriding.

(b) A user making an emergency landing:

(1) Is not charged a landing fee.

(2) Pays all costs for labor, material, parts, use of equipment, tools, and so forth, to include, but not limited to:

(i) Spreading foam on the runway.

(ii) Damage to runway, lighting, and navigation aids.

(iii) Rescue, crash, and fire control services.

(iv) Movement and storage of aircraft.

(v) Performance of minor maintenance.

(vi) Fuel or oil (AFR 144–9).

(3) Files a circumstantial landing report with the installation commander and completes DD Form 2402.

(c) The installation commander:

(1) Documents total cost incurred by the U.S. government. (Use Part 812 of this chapter for cost determination.)

(2) Collects payment of all charges incurred. (In some instances, it may be necessary to arrange to bill the user for the appropriate charges.)

(3) Prepares an emergency landing report if there are no survivors.

(4) Complies with appropriate portions of § 855.4 of this part.

(5) Handles an emergency landing by a foreign military or foreign government-owned aircraft in the same manner as for a U.S. government-owned aircraft.

§ 855.6 Inadvertent unauthorized landings.

(a) The installation commander may determine a landing to be inadvertent if the aircraft operator:

(1) Landed due to flight disorientation.

(2) Mistook the U.S. Air Force installation for a civil airport.

(b) Reporting procedures in § 855.4 of this part and normal landing fees (§ 855.16 of this part) are applicable. An unauthorized landing fee (§ 855.16 of this part) may be assessed to compensate the government for the added time, effort, and risk involved in an unauthorized landing. This unauthorized landing fee may be waived by the installation commander or a designated representative if, after interviewing the pilot-in-command and appropriate government personnel, it is determined that flying safety was not significantly impaired. The pilot-in-command may appeal the imposition of an unauthorized landing fee for an inadvertent landing to the MAJCOM, whose decision will be final. A subsequent inadvertent landing will be processed as an intentional unauthorized landing.

§ 855.7 Intentional unauthorized landings.

(a) The installation commander may categorize an unauthorized landing as intentional when substantial evidence demonstrates that the pilot knew the landing was unauthorized or the civil aircraft operator:

(1) Landed without an approved DD Form 2401 on board the aircraft.

(2) Landed for a purpose not approved on the DD Form 2401.

(3) Operated an aircraft not of a model or registration number on the approved DD Form 2401.

(4) Did not request or obtain the required final clearance from the installation commander or a designated representative at least 24 hours before aircraft arrival.

(5) Did not obtain landing clearance from the air traffic control tower.

(6) Landed with an expired DD Form 2401.

(7) Obtained landing authorization through fraudulent methods.

(8) Requested permission to land from any U.S. Air Force authority, including the control tower, and was denied.

(b) Reporting procedures in § 855.4 of this part and normal landing fees (§ 855.16 of this part) are applicable. Since intentional unauthorized landings increase reporting, processing, and staffing costs, the unauthorized landing fee (§ 855.16 of this part) for paragraphs (a) (1) through (6) of this section will be increased by 100 percent. The fee will be increased 200 percent for items in paragraphs (a) (7) and (8) of this section and when substantial evidence demonstrates the pilot knew the landing was unauthorized.

(c) Under the conditions described in paragraph (b) of this section, an installation commander in the U.S., its territories or its possessions may choose to detain the aircraft at the installation until:

(1) The unapproved landing has been reported to the appropriate civil aviation authority, HQ USAF/PRPJ, and the appropriate U.S. Attorney.

(2) The pilot or other competent authority of the owner has executed DD Form 2402 and prepared the circumstantial landing report.

(3) All applicable charges have been paid.

(d) The installation commander may, at his or her discretion, release the aircraft upon compliance with paragraphs (c) (1) and (2) of this section and payment of the inadvertent unauthorized landing charge, if he or she wishes to investigate the matter further before determining whether the circumstances warrant higher fees. The aircraft must not be released without obtaining bond, promissory notes, or other security for payment of the highest charge that might be assessed.

(e) The pilot and passengers will not be detained longer than is necessary for identification, although they may be permitted to remain in a lounge or other waiting area on the base at their request for such period as the installation commander may determine (normally not to exceed close of business hours at the home office of the entity owning the aircraft, if the operator does not own the aircraft). No person will be detained involuntarily after identification is complete without coordination from the appropriate U.S. Attorney, the MAJCOM, and HQ USAF/PRPJ.

(f) The unauthorized landing may be prosecuted as a criminal trespass, especially if a debarment letter has been issued. Repeated intentional unauthorized landings prejudice the user's FAA operating authority and jeopardize future use of any U.S. Air Force installation.

Subpart C—Civil Fly-In Procedures

§ 855.8 Civil fly-ins.

Civil aircraft operators may be invited to participate in a U.S. Air Force fly-in for a base sponsored or funded activity being held at a specified U.S. Air Force installation. They will be authorized use only during the period of the event.

§ 855.9 Civil fly-in procedures.

(a) The installation commander:

(1) Requests approval from the MAJCOM or SOA.

(2) Provides HQ USAF/PRPJ/XOOR/XOOO and SAF/PAC with the date and purpose of the fly-in.

(3) Ensures that DD Form 2402 is completed by each user. DD Forms 2400 and 2401 are not required for fly-in participants.

(b) The MAJCOM or SOA ensures HQ USAF/PRPJ/XOOR/XOOO and SAF/PAC are advised of the approval or disapproval for the fly-in.

Note.—This section does not apply to civil aircraft aerobatic performance or demonstrations (Part 837 of this chapter), or transport-type (revenue or nonrevenue) flights.

Subpart D—Civil Aircraft

§ 855.10 Conditions for use of U.S. Air Force installations.

The U.S. Air Force authorizes use of its installations for a specific purpose by a named individual or company (not transferable to a second or third party) which does not extend to other types of civil aviation use. An approved landing permit does not obligate the U.S. Air Force to provide supplies, equipment, or facilities other than the landing, taxiing, and parking areas (§ 855.17 and 18 of this part). Personnel on board are only authorized activities at the installation directly related to the type of use granted. All users are expected to submit their application (DD Forms 2400, 2401, and 2402) at least 30 days in advance of intended use and, except for weather alternate use, must contact the appropriate installation commander for final clearance at least 24 hours in advance of arrival. Failure to comply with either time limit may result in denied landing rights.

§ 855.11 Types of civil use.

Listed below are specific types of civil use the U.S. Air Force normally authorizes. Others may be considered if sufficient justification is provided. Application for each type of use must be made on a separate DD Form 2401. The letter following each type of use in paragraphs (a) through (p) of this section will be used when a landing permit number is assigned (§ 855.14(c) of this part).

(a) *Contractor or subcontractor personnel (A).* A U.S. or foreign contractor or subcontractor, operating corporate or personal aircraft, who uses a U.S. Air Force installation to fulfill the terms of a U.S. government contract. Verification: The contractor or subcontractor must indicate on the DD Form 2401 the current government contract numbers; the U.S. Air Force installation required for each contract; a brief description of the work to be performed; and the name, telephone number, and address of the government contracting officer.

Note.—Potential contractors may not land at U.S. Air Force installations for the purpose of pursuing or presenting an unsolicited proposal for procurement of government business.

(b) *Demonstration flights (B).* Permits an aircraft or aircraft component manufacturer to display or demonstrate aircraft (nonaerobatic) or installed components to U.S. government representatives who have procurement interest or authority, or certification responsibilities. Verification: Nonaerobatic demonstration or display must be contractural provision or presented at the request of an authorized U.S. government representative. The name, address, and telephone number of the requesting government representative or contracting officer and contract number must be included on the DD Form 2401.

(c) *Active duty U.S. military (C).* Authorizes active duty U.S. military members, operating their own aircraft or aircraft leased at their own expense, to use any U.S. Air Force installation for official duty transportation (temporary duty (TDY), permanent change of station, etc.) or for private, nonrevenue flights. (Members of the U.S. Public Health Service are considered active duty U.S. military.) Verification: Provide Social Security number in block 1 on DD Form 2401.

(d) *Reserve Forces (D).* Permits members of the U.S. Reserve Forces (including Reserve Officer Training Corps and National Guard) operating their own aircraft or aircraft leased at their own expense, to use a specific U.S. Air Force installation where their assigned unit is located to fulfill their official duty commitment or for TDY at other installations when on official travel orders. Verification: Request

routed through commander for an endorsement which validates military status and requirement for use of U.S. Air Force installations listed on permit application. When appropriate, travel orders must be on board the aircraft.

(e) *Civilian employees of the U.S. government (E).* Permits civilian employees of the U.S. government, operating their own aircraft or aircraft leased at their own expense, to use U.S. Air Force installations only for official government business travel. Verification: A copy of current travel orders or other official travel certificate must be on board the aircraft.

(f) *Special conveyance (F).* Permits government personnel to use a chartered aircraft for single flights between two or more points for official business only. The official directing the travel must authorize use of special conveyance and arrangements for hiring the aircraft must be made by a transportation office (AFR 75–8, volume I). Verification: A copy of official orders citing the special conveyance authorization must be on board the aircraft.

(g) *Retired U.S. military (G).* (Includes Regular and Reserve personnel receiving retirement pay and an identification card authorizing use of the commissary, base exchange, and military medical facilities.) Permits retired U.S. military members, operating their own or leased aircraft, to use a U.S. Air Force installation in conjunction with activities related to retirement entitlements authorized by law or regulation. Verification: A copy of retirement orders must be on file with the approving authority.

(h) *Civil Air Patrol (CAP) (H).* Permits aircraft owned and operated by the CAP or by a CAP member to use designated U.S. Air Force installations for official CAP activities. Verification: Endorsement of the application by HQ CAP-USAF/DO, Maxwell AFB AL 36112–5572.

(i) *Aero club member (I).* Permits individuals to operate their own aircraft into and out of the U.S. Air Force airfield where they hold active aero club membership. Verification: Written endorsement on the DD Form 2401 by the aero club manager which validates the individual's aero club membership. (Members using U.S. Air Force aero club facilities located on a civil airfield must provide the endorsement, and DD Forms 2400 and 2402 to the local commander. DD Form 2401 is not required.)

(j) *Weather alternate airport (J).* Permits scheduled air carriers to divert to a specified U.S. Air Force installation when weather conditions require a change from the original destination while in flight. Aircraft may not be dispatched from the point of departure to a U.S. Air Force airfield which has been designated as an approved weather alternate. Verification: Actual use is predicated on weather conditions at scheduled destination. Scheduled route structure must encompass the U.S. Air Force airfield requested for use.

(k) *Military Airlift Command (MAC) contract or charter (K).* Permits an air carrier to use a U.S. Air Force installation under the terms of a MAC contract. Landing permits for this type of use are processed by HQ MAC/TRC. Verification: International flights must have a MAC Form 8, Civil Aircraft Certificate, on board the aircraft. Domestic flights must have either a Certificate of LOGAIR Operations (U.S. Air Force—AFLC), a Certificate of QUICKTRANS (U.S. Navy), a Certificate of Courier Service Operations (MAC), or a Certificate of Intra-Alaska Operations (MAC) on board the aircraft.

(l) *U.S. government contract or charter operator (L).* Permits an air carrier to use a U.S. Air Force installation under the terms of a U.S. government contract or charter agreement by a U.S. government department or agency other than the DOD. Verification: Carrier must identify the chartering agency and provide the name, address, and telephone number of the government official procuring the transportation. An official government document must be on board the aircraft to substantiate that the flight is operating for a U.S. government department or agency. (National Aeronautics and Space Administration charters are identified by SF 1169, U.S. Government Transportation Request. Army and Air Force Exchange Service (AAFES) charters are identified by AAFES Form 4150–1, AAFES Purchase and Delivery Order.)

(m) *Contractor or subcontractor charter (M).* An operator who uses a U.S. Air Force installation for the transportation of U.S. or foreign contractor or subcontractor personnel or cargo in support of a current U.S. government contract. Verification: The contractor or subcontractor must provide written validation to the approving authority that the charter operator will be operating on their behalf in fulfilling the terms of a government contract, to include current government contract numbers and titles; the U.S. Air Force installations which are required; and the name, telephone number, and address of the government contracting officer.

(n) *DOD charter (N).* A civil aircraft operator who uses a U.S. Air Force installation for the official transportation of DOD personnel or cargo. Verification: Tender of service approved by the Military Transportation Management Command (MTMC) and an SF 1169 or SF 1103, U.S. Government Bill of Lading, on the aircraft to validate the operation is for the DOD (AFM 75–2). (Passenger charters arranged by the MTMC are assigned a commercial air movement (CAM) or civil air freight movement (CAFM) number each time a trip is awarded. Installations will normally be notified by message at least 24 hours in advance of a pending CAM operation.)

(o) *Media (O).* Permits representatives of the media to gather information about a U.S. government operation or event. Use will be considered on a case-by-case basis; for example, if other forms of transportation would preclude meeting a production deadline of if use would be in the best interest of the U.S. government, authorization would be warranted. DD Forms 2400 and 2402 should be on file with HQ USAF/PRPJ to ensure prompt telephone approval for validated requests. Verification: Concurrence of the installation commander, base operations officer, and public affairs officer.

(p) *Other.* Under certain circumstances, based on the justification provided, use of U.S. Air Force installations may be authorized for:

(1) Aircraft certification testing as required by FARs which does not involve use of Air Force testing hardware (P).

(2) Commercial development testing at Air Force flight test facilities (Part 835 of this chapter) (Q).

(3) Commercial charter operations (R).

(4) Commercial aircrew training flights (S).

(5) Private, nonrevenue producing flights (T).

(6) Temporary scheduled air service (U).

(7) Foreign government charter (V).

(8) Flights transporting foreign military sales (FMS) material (W). (Hazardous, oversized, or classified cargo only.) Verification: Cargo information must be provided as specified in § 855.24 of this part. Application must also include the Department of Transportation exemption number when harardous cargo is to be transported, if required.

(9) Certified flight record attempts. (X).

(10) Political candidates (Y). (For security reasons only.) Aircraft either owned or chartered explicitly for a Presidential or Vice Presidential candidate, including not more than one accompanying overflow aircraft for the candidate's staff and press corps.

Candidate must be a Presidential or Vice Presidential candidate who is being furnished protection by the U.S. Secret Service. Aircraft clearance is predicated on the Presidential or Vice Presidential candidate being aboard one of the aircraft (either on arrival or departure). After normal duty hours, flight schedule changes must be reported through the HQ U.S. Air Force Operations Center. Normal landing fees will be charged. Fuel may be sold on a cash or credit basis (AFR 144–9). To reduce conflict with U.S. statutes and U.S. Air Force operational requirements, and to provide expeditious handling of aircraft and passengers, the following guidance applies for the installation commander:

(i) Minimum official (base officials) welcoming party.

(ii) No special facilities are to be provided.

(iii) No onbase political rallies or speeches.

(iv) No official transportation should be provided for unauthorized personnel (press, local populace, etc.). Verification: The Secret Service must confirm that use has been requested in support of their security responsibilities.

(11) Aircraft either owned or personally chartered for transportation of the President, Vice President, or a past President of the U.S.; the head of any U.S. federal department or agency; or a member of the Congress (Z). Use by other than the President or Vice-President must be for official government business. Any request received by MAJCOM or installation commanders from or for members of the Congress must be reported to the Director of Legislative Liaison (SAF/LL) as prescribed in AFR 11–7.

§ 855.12 Approving authority.

The authority to approve or disapprove civil aircraft use of U.S. Air Force installations is vested in:

(a) *Directorate of Programs and Evaluation, Deputy Directorate for Bases and Units (HQ USAF/PRPJ).* HQ USAF/PRPJ may act on any request for any type of civil aviation use; however, it reserves exclusive approval authority for the following:

(1) Use of multiple U.S. Air Force installations which are within the jurisdiction of multiple MAJCOMs or SOAs, except as delegated in paragraph (b) of this section.

(2) Those listed in § 855.11 (o) and (p) of this part except as specifically delegated to another approving authority.

(3) Joint-use (§ 855.28 of this part).

(4) Any unusual or unique use not specifically authorized by this regulation.

(b) *MAJCOM, SOA, or installation commander.* With the exception of those uses reserved for HQ U.S. Air Force and HQ MAC approval (paragraphs (a) and (d) of this section), MAJCOMs, SOAs, or installation commanders may approve or disapprove applications (DD Forms 2400, 2401, and 2402) for types of use described in § 855.11 of this part at installations under their jurisdiction. Additionally, they may give approval for one-time, official business operations which are in the best interest of the U.S. government and do not violate other provisions of this regulation. As a minimum, for one-time flights authorized under this paragraph, insurance verification and a completed DD Form 2402 must be provided before the aircraft operates into the U.S. Air Force airfield. Authority to approve civil aircraft use of U.S. Air Force airfields on foreign soil may be limited. Commanders outside the continental U.S. (CONUS) must be familiar with international agreements which may render inapplicable, in part or in whole, provisions of this regulation.

(c) *Commander, Alaskan Air Command (AAC).* In addition to paragraph (b) of this section, the Commander, AAC, may approve and disapprove landing permits for use under § 855.11(p) (3) and (5) at Alaskan airstrips within the jurisdiction of HQ Tactical Air Command (TAC) and HQ AAC, with the exception of Shemya AFB. All use of Shemya AFB will be approved by HQ USAF/PRPJ. HQ AAC must provide HQ TAC/DOO with a copy of all permits approved for use of TAC airfields.

(d) *Commander, MAC.* In addition to paragraph (b) of this section, the Commander, MAC, may approve use of U.S. Air Force installations worldwide for flights in support of MAC contracts.

(e) *Commander, Pacific Air Forces (PACAF).* In addition to paragraph (b) of this section, the Commander, PACAF, may approve private, nonrevenue flights transiting Wake Island for refueling purposes.

(f) *Commander, Air Force Space Command (AFSPACECOM).* In addition to paragraph (b) of this section, the Commander, AFSPACECOM, may approve civil flights transiting Sondrestrom AFS, Greenland, for refueling purposes.

(g) *USDAO.* The USDAO, acting on behalf of HQ USAF/PRPJ, may approve a request for a one-time landing at a U.S. Air Force installation provided:

(1) The request is for official government business of either the U.S. or the country to which the USDAO is accredited.

(2) The U.S. Air Force installation is located within the country to which the USDAO is accredited.

(3) Approval will not violate any agreement with the host country.

(4) The installation commander concurs.

§ 855.13 Application procedures.

The prospective user can obtain a copy of this part (AFR 55–20) and the required forms from a U.S. Air Force installation or an approving authority. The user is responsible for reviewing the regulation and accurately completing the forms before submitting them to the approving authority (§ 855.12 of this part). The types of use normally authorized are specified in § 855.11 of this part. The verification required for each type of use must be included with the application. To allow time for processing, all documents and a self-addressed, stamped envelope should be submitted at least 30 days before the date of the first intended landing. The name of the user must be the same on all forms. Original handscribed signatures, not facsimile elements, are required on all forms. Prospective civil users of a U.S. Air Force installation must apply for authorization as follows:

(a) Have the insurance company or its authorized agent complete and sign DD Form 2400. The user name in item 3 of the DD Form 2400 must correspond with the user name in item 1 of DD Form 2401. All coverages must be stated in U.S. dollars. See table 1 for required minimum coverage. The DD Form 2400 is valid until 1 day before insurance expiration date. A DD Form 2400 with the statement "until cancelled" in lieu of a specific expiration date is valid for 2 years from the effective date. Upon expiration, the DD Form 2400 must be resubmitted along with DD Form 2401 for continued use of Air Force installations. The DD Form 2400 may be sent to the approving authority by either the user or insurer.

(b) Prepare and sign a separate set of DD Forms 2401 for each type of use requested. Submit DD Form 2401 in an original and two copies when HQ USAF/PRPJ is the approving authority, and an original and three copies for other approving authorities.

(1) Provide, in alphabetical order, the name and location of each U.S. Air Force installation requested for use. (The statement "Any U.S. Air Force Installation Worldwide" is acceptable for users performing MAC charters. "Any U.S. Air Force Installation Within the CONUS" is acceptable, if warranted by official government business, for other users.)

(2) Provide a brief explanation of purpose for use with verification for each type of use as specified in § 855.11 of this part. When the purpose for use does not correspond with the categories listed in § 855.11 of this part, it may be considered if sufficient justification is provided.

(3) Aircraft registration numbers are required unless the DD Form 2400 indicates coverage for "any aircraft of the listed model owned and or operated" in lieu of specific registration numbers (§ 855.15 of this part). All other aircraft information must be provided.

(4) The period of use is determined by the insurance expiration date shown on a completed DD Form 2400. Except where an earlier date of expiration is indicated on the permit, the landing permit will expire 1 day before the insurance coverage expiration date shown on DD Form 2400, or 2 years from the date the permit is issued when the insurance expiration date either exceeds 2 years or is indefinite (for example, "until cancelled").

(5) Once the DD Form 2401 has been approved and distributed, users may make no further entries or amendments without the consent of the approving authority.

(6) Upon expiration, resubmit DD Form 2401 along with DD Form 2400 for continued use of U.S. Air Force installations.

(c) Complete, sign, and send original DD Form 2402 to the approving authority. When the user is a corporation, the DD Form 2402 must be completed and signed by a second corporate officer (other than the officer executing DD Form 2402) to certify the signature of the first officer. As necessary, the U.S. Air Force also may require that the form be authenticated by an appropriately designated third official. Once the completed and signed DD Form 2402 has been accepted by an approving authority, and unless rescinded for cause, it is valid until obsolete, and need not be resubmitted to the same approving authority.

§ 855.14 Processing procedures.

Upon receipt of an application (DD Forms 2400, 2401, and 2402) for use of a U.S. Air Force installation, the approving authority:

(a) Determines the availability of the installation and its capability to accommodate the type of use requested.

(b) Determines the validity of the request and ensures all entries on DD Forms 2400, 2401, and 2402 are in conformance with this regulation.

(c) Approves DD Form 2401 (with conditions or limitations listed) by completing all items in the approving authority section. Installation commanders assign a permit number comprised of the last three letters of the installation's International Civil Aviation Organization (ICAO) code identifier, the last two digits of the calendar year, a four-digit number sequentially assigned, and a letter suffix (§ 855.11 of this part) indicating the type of use; such as ADW 86-001C. MAJCOMs, SOAs, and USDAOs use a three-position organization abbreviation; such as MAC 86-0002K.

(d) Disapproves the request if:

(1) Use interferes with current operations, security, or safety.

(2) Adequate civil facilities are collocated or available in the proximity of the requested U.S. Air Force installation when use is not required for official government business (§ 855.1(a)(8)).

(3) Use could result in substantial competition with civil airports or air carriers.

(4) Civil user has not fully complied with this regulation.

(e) Distributes the approved DD Form 2401 before the first intended landing, when possible, and:

(1) Retains original.

(2) Returns two copies to the user.

(3) Provides a copy to HQ USAF/PRPJ, when the approving authority is other than HQ USAF/PRPJ. HQ USAF/PRPJ will provide a computer printout of current landing permits to the MAJCOMs. The MAJCOMs will make distribution to the appropriate installations.

§ 855.15 Insurance requirements.

Each user who applies for permission to land at a U.S. Air Force installation must present proof of third-party liability insurance on DD Form 2400, with the amounts stated in U.S. dollars. The policy number, effective date, and expiration date are required. The statement "until cancelled" may be used in lieu of a specific expiration date. The geographical area of coverage must include the area where the U.S. Air Force installation of proposed use is located. If several aircraft or aircraft types are included under the same policy, a statement such as "all aircraft owned," "all aircraft owned and or operated," or "all aircraft operated," may be used in lieu of aircraft registration numbers. To meet the insurance requirements, either Split Limit coverage for Bodily Injury, Property Damage, and Passengers or a Single Limit coverage is required. The coverage carried will be at the expense of the user with an insurance company acceptable to the U.S. Air Force and must be current during the period the U.S. Air Force installation will be used. The liability required is computed on the basis of aircraft maximum gross takeoff weight (MGTOW) and passenger or cargo configuration. Minimum coverage will not be less than the amount indicated in table 1.

TABLE 1.—AIRCRAFT LIABILITY COVERAGE REQUIREMENTS

[Stated in U.S. dollars]

	Bodily injury	Property damage	Passenger
(a) Civil aircraft without passenger seats:			
12,500 pounds and under:			
Each person	$500,000		
Each accident	1,000,000	$500,000	
Over 12,500 pounds:			
Each person	500,000		
Each accident	5,000,000	3,000,000	
(b) Civil aircraft with passenger seats:			
12,500 pounds and under:			
Each person	500,000		$500,000
Each accident	1,000,000	500,000	500,000 × number of passenger seats
Over 12,500 pounds:			
Each person	500,000		500,000
Each accident	5,000,000	3,000,000	500,000 × 75% × number of passenger seats

(a) Any insurance presented as a single limit of liability or a combination of primary and excess coverage will be an amount equal to or greater than the minimums required for bodily injury, property damage, and passengers for each accident as indicated in table 1.

(b) Each user's policy will specifically provide that:

(1) The insurer waives any right or subrogation they may have against the U.S. by reason of any payment made under the policy for injury, death, or property damage that might arise out of or in connection with the insured's use of any U.S. Air Force installation.

(2) The insurance afforded by the policy applies to the liability assumed by the insured under DD Form 2402.

(3) If the insurer or the insured cancels or reduces the amount of insurance afforded under the listed policy before

the expiration date indicated on DD Form 2400, the insurer will send written notice of policy cancellation or coverage reduction to the approving authority at least 30 days before the effective date of the cancellation or reduction. (The policy must state that any cancellation or reduction will not be effective until at least 30 days after such notice is sent.)

§ 855.16 Landing, parking, and storage fees.

(a) *Fees.* All fees are normally due and collectible at time of use of any U.S. Air Force airfield and are deposited with the accounting and finance officer using DD Form 1131, Cash Collection Voucher. In some instances, it may be necessary to bill the user for charges incurred. Guidance and assistance may be obtained from the installation accounting and finance officer. The landing, parking, and storage fees (tables 2 and 3) are based on the aircraft MGTOW. The installation commander may permit parking and storage on a nonexclusive, temporary, or intermittent basis, when compatible with military requirements. The time that an aircraft spends on an installation is at the discretion of the installation commander but should be linked to the type of use authorized. At those locations where there are U.S. Air Force aero clubs, parking and storage privileges may be permitted in the area designated for aero club use without regard for the type of use authorized, if consistent with aero club policies. Any such permission may be revoked upon notice, based on military needs and the installation commander's discretion.

(b) *Exceptions.* The landing, parking, and storage fees are not applicable for civil aircraft which are:

(1) Privately owned, leased, or operated by active duty military members, retired U.S. military members, CAP members, members of the Reserve Forces, or U.S. government civilian employees.

(2) Operated by aero club members (§ 855.11(i)).

(3) Operated in support of official government business, including those authorized use under § 855.11(b), or any use, the cost of which is subject to reimbursement by the U.S. government.

(4) Foreign government-owned aircraft as indicated in § 855.25.

(5) Foreign civil aircraft chartered for use by foreign heads of state on official state visits.

(6) Exempt from the requirement for a civil aircraft landing permit.

TABLE 2.—Landing Fees

Aircraft max gross takeoff Wt (MGTOW)	Normal fee	Unauthorized fee	International fee	Minimum fee	U.S. Territories, & Possessions	Overseas
	$1.50/1,000 lb MGTOW or fraction thereof.			$20	X	
	$1.70/1,000 lb MGTOW or fraction thereof.			$25		X
Up to and including 12,500 lb.		$100			X	X
12,501 to 40,000 lb		$300			X	X
Over 40,000 lb		$600			X	X
			Increase unauthorized fee by 100% or 200%.		X	X

TABLE 3.—PARKING AND STORAGE FEES

Fee per aircraft for each 24-hour period of less	Minimum fee	Charge begins	Ramp	Hangar
$1.00/100,000 *	$20	6 hours after landing	X	
$2.00/100,000 lb MGTOW or fraction thereof.	$20	Immediately		X

§ 855.17 Aviation fuel and oil purchases.

When a user qualifies under the provisions of AFR 144–9, purchase of U.S. Air Force fuel and oil may be made on a cash basis, or on a credit basis after establishment of an Authorized Credit Letter (AFR 144–9, attachment 1). The Authorized Credit Letter must be submitted to HQ USAF/PRPJ and approved by SA–ALC/ACFMA, Kelly AFB TX 78241–5000, before products can be purchased on credit. Aviation fuel charges will be billed as prescribed in AFR 144–9 and AFM 67–1, volume I, part three, chapter 1.

§ 855.18 Supply and service charges.

Supplies and services furnished to a user will be charged for as prescribed in AFM 67–1, volume I, part one, chapter 10, section N, subsection 2, and AFR 177–102, paragraph 29.24. A personal check with appropriate identification, cashier's check, money order, or cash is an acceptable means of payment. Charges for handling FMS cargo are prescribed in AFR 170–3.

Subpart E—Foreign Government Aircraft

§ 855.19 General information.

All foreign military or foreign government-owned, noncommercially operated aircraft (§ 855.2(k)) must have authorization before using U.S. Air Force installations. Where agreements do not exist between the U.S. and a foreign government or between the U.S. Air Force and a foreign air force for reciprocal use by military aircraft, the foreign government must specifically request permission for its aircraft to land at U.S. Air Force installations.

Note.— Permission to land at U.S. Air Force installations in the U.S. or foreign countries does not constitute nor take the place of diplomatic or other overflight clearance requirements.

§ 855.20 Application procedures.

Foreign government aircraft are not required to submit DD Forms 2400, 2401, and 2402 for permission to land at a U.S. Air Force installation. Instead, the foreign government must:

(a) Complete and send a written request through its air attache to HQ USAF/CVAII, Washington, DC 20330–2006, a minimum of 72 hours, excluding Saturday, Sunday, and U.S. holidays, before first intended landing. (For use of U.S. Air Force installations in the Canal Zone, all Latin American countries are authorized to submit their requests direct to Commander, Southern Air Division (USAFSO), APO Miami 34001–5000. Requests must be submitted at least 24 hours in advance.)

(b) Submit a request for diplomatic clearance to the Department of State, if flight to U.S. territory is desired, unless flight in U.S. airspace is already authorized by an appropriate agreement.

(c) Submit a request for diplomatic or other required clearance to each appropriate foreign country which is to be overflown or in which a landing is to be made, when use of a U.S. Air Force installation in a foreign country is desired.

§ 855.21 Processing procedures.

When an application is received, the approving authority:

(a) Determines the availability of the installation and its capability to accommodate the user request.

(b) Ensures that the prospective foreign government user has a valid requirement.

§ 855.22 Approving authority.

(a) *Assistant Vice Chief of Staff, International Affairs Division (HQ USAF/CVAII).* HQ USAF/CVAII acts on all requests for use of a U.S. Air Force installation by foreign government aircraft except those specifically delegated to another approving authority. An aircraft landing authorization number (ALAN) is assigned each request approved for foreign government aircraft. HQ USAF/CVAII will obtain telephonic clearance from the consolidated command post at Howard AFB, Panama, before issuing an ALAN to any country whose aircraft are transiting Howard while en route to or from the U.S. Appropriate U.S. Air Force installations, MAJCOMs, and Air Staff offices will be notified by message.

(b) *Commander, USAFSO.* Commander, USAFSO may act on requests from any Latin American country for the country's military aircraft, or other government-owned aircraft not engaged in commercial operations, to use U.S. Air Force installations under USAFSO control, ensuring all authorizations are consistent with current directives. USAFSO will provide appropriate billing instructions and flight information in a landing authorization message.

§ 855.23 Aviation fuel and oil purchases.

U.S. Air Force aviation fuel and oil may be purchased for foreign government aircraft as authorized by separate agreement or as stated in the notification message. Aviation fuel and oil charges will be billed as prescribed in AFM 67–1, volume I, chapter 1.

§ 855.24 Foreign military sales (FMS) cargo.

(a) *FMS charges.* So that the U.S. Air Force may properly apply charges for loading and other services performed in support of foreign government aircraft transporting FMS cargo, the following informaton is required on each request:

(1) Description of cargo (nomenclature) to include requisition numbers, if available, applicable FMS case(s) number(s), and delivery term codes.

(2) U.S. Air Force agency with which prior arrangements have been made for provision of military terminal loading and/or other services.

(3) U.S. government FMS case management agency to which costs for services rendered are chargeable.

(4) Name, address, and telephone number of freight forwarder.

(5) Name, address, and telephone number of shipper.

(b) *Explosives and other hazardous material.* Aircraft transporting hazardous material must specify in paragraph 5 of the ALAN request the U.S. Department of Transportation proper shipping name and hazard class with respective number of pieces, weight, and cube. Additionally, in the case of explosives, provide net explosive weight of each explosive class and identify the U.S. facility where the hazardous material is to be loaded or unloaded.

(c) *Loading services.* When an aircraft picks up or delivers material at a U.S. Air Force base, it must be equipped with sufficient cargo pallets and/or tiedown materials to facilitate loading. Compatible 463L pallets and nets will be exchanged on a one-for-one basis for serviceable units. Nonstandard pallets and nets cannot be exchanged; however, they will be used to build-up cargo loads after arrival of the aircraft. Aircraft arriving without sufficient cargo loading and tiedown devices must be floor loaded and the aircraft crew will be responsible for purchasing necessary ropes, chains, etc.

§ 855.25 Supply and service charges.

(a) Supplies and services furnished to a foreign government aircraft which are not covered by an FMS case will be charged for as prescribed in AFM 67–1, volume I, part one, chapter 10, section N, subsection 2; AFR 177–102, paragraph 29.24; and AFR 170–3; or other applicable laws and regulations.

(b) Invoicing procedures for terminal services (aircraft loading or unloading) prescribed in AFR 177–112, paragraph 4–25, will be used except when loading or unloading services are chargeable to an FMS case; that is, material assigned delivery term code 8 in the DD Form 1513, U.S. DOD Offer and Acceptance. FMS Material assigned delivery term code 8 will be billed to the FMS case as prescribed in AFR 170–3.

(c) Communications services are normally provided only for official government business. If charges accrue to the U.S. government, reimbursement must be provided.

§ 855.26 Landing, parking, and storage fees.

Fees will not be charged for foreign military or foreign government aircraft unless specified in the HQ USAF/CVAII message granting authorization for landing.

§ 855.27 Waiver authority.

HQ USAF/CVAII reserves the right to waive the above procedures for any unusual or unique use not specifically authorized by this regulation for use of U.S. Air Force facilities by foreign government aircraft.

Subpart F—Joint Use of a U.S. Air Force Installation

§ 855.28 U.S. Air Force joint-use policy.

Joint-use of a U.S. Air Force installation will be considered only if there will be no compromise of military response, security, readiness, or safety and when requested by authorized local government representatives eligible to sponsor a public airport. Such requests are considered and evaluated on an individual basis by all reviewing levels. Generally, an airfield will be considered for joint-use if it does not have a nuclear alert force, pilot training, nuclear storage, or a major classified mission. Civil operations must begin within 5 years of formalizing an agreement.

§ 855.29 Procedures for sponsor.

To initiate consideration for joint-use of a U.S. Air Force installation, a formal proposal must be submitted by a local government agency eligible to sponsor a public airport to the installation commander, and include the following:

(a) Type of operation.

(b) Type and number of aircraft to be located on or operating at the installation.

(c) An estimate of the number of annual operations for the first 5 years.

§ 855.30 Procedures for U.S. Air Force.

(a) The installation commander, on receipt of the request, without precommitment or comment, will send the documents to the Air Force representative at the FAA regional office within the geographical area where the installation is located, with an information copy to HQ USAF/PRPJ.

(b) The U.S. Air Force representative at the FAA regional office will provide comments on the request regarding airspace, air traffic control, and other related areas, return the request with appropriate comments to the installation commander, and advise local FAA personnel of the proposal for joint-use. Operational considerations will be based on the premise that military aircraft will receive priority handling (except in emergencies), if traffic must be adjusted or resequenced. Manpower increases in air traffic control or related support activities required solely for the civil operation, normally will not be considered but if accommodated, must

be fully reimbursed by the joint-use sponsor. Additional equipment or relocation of equipment must be funded by the civil sponsor.

(c) The installation commander will comment on the request and send the comments and all related documents through channels to HQ USAF/PRPJ.

(d) The U.S. Air Force will act as lead agency for the preparation of the environmental analysis (Part 989 of this chapter). The community government representatives, working in coordination with local U.S. Air Force personnel and other concerned local or federal officials, must identify the proposal, develop conceptual alternatives, and provide planning, socioeconomic, and environmental information as specified by HQ USAF/LEEV. The information must be complete and accurate in order to serve as a basis for the preparation of U.S. Air Force environmental documents. The sponsor will normally fund the environmental studies required for the environmental impact analysis process. Environmental analysis requirements can be obtained from HQ USAF/LEEV, Washington, DC 20332–5000.

(e) In addition to the environmental analysis, HQ USAF/PRPJ will consider all of the following factors when evaluating a joint-use proposal:

(1) The current and programmed military activities at the installation.

(2) Runway and taxiway facilities. Joint-use will normally not be considered at locations with single runway capacity.

(3) Security. Joint-use increases the possibility for sabotage, terrorism, and vandalism. Joint-use will not be considered:

(i) If military and civil aircraft would be collocated.

(ii) When other than normal airfield facilities would be shared.

(iii) If access to the civil facilities would require routine transit through the base.

(4) Availability of supplies and maintenance services.

(5) Volume and type of military traffic.

(i) Compatibility of proposed civil operations with present and planned military operations.

(ii) Normally, aircraft must be certified for operation under instrument flight rules (IFR), equipped with a two-way radio, and operated by an IFR qualified crew.

(6) Fire, crash, and rescue services.

(7) The extent to which the proposed use might detract from the installation capability to meet national defense needs.

(8) Availability of public airports to accommodate the current and future civil aviation requirements of the community and the practicality of constructing or expanding a public airport.

(9) Availability of sufficient land for civil facilities. The majority of land for the civil facilities must be located on the perimeter of the U.S. Air Force installation or be segregatable in a manner which does not detract from security. Federal legislative jurisdiction should be retroceded to the State after joint-use is implemented. If the community does not already own the needed land, it must be acquired at no expense to the U.S. government. If land presently owned by the government is desired, the community must contact the General Services Administration regarding availability of excess U.S. government property and submit an application through FAA (50 U.S.C. 1622). Application for lease of U.S. Air Force property must be processed through channels to HQ USAF/LEER as prescribed in AFR 87–3. All real property outleased will be processed through the Corps of Engineers at fair market value.

(10) Whether the community would acquire, construct, and maintain all necessary facilities for civil aviation operations; for example, a terminal building, parking ramp, taxiways, and, if appropriate, a civil runway. The U.S. Air Force will not provide manpower to install, operate, maintain, alter, or relocate navigation equipment or aircraft arresting systems for the sole use of civil aviation. U.S. Air Force approval would be required on siting, design, and construction of the civil facilities.

(11) Terms for reimbursement. The civil sponsor must reimburse the U.S. Air Force a proportionate share for maintenance and operation of the government runway and other facilities used.

(f) The proposed joint-use agreement will be negotiated by HQ USAF/PRPJ and concluded on behalf of the Air Force by SAF/MI. The joint-use agreement will state the extent to which the provisions of this regulation will apply to all civil aviation use authorized.

(g) When processing major amendments to existing joint-use agreements, (a) through (f) of this section are applicable.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–29061 Filed 12–30–86; 8:45 am]

BILLING CODE 3910–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–3124–7]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is approving a revision to the carbon monoxide (CO) portion of the Minnesota State Implementation Plan (SIP), pertaining to the intersection of Snelling and University Avenues in the City of St. Paul (Ramsey County). USEPA is approving this SIP revision because it provides for attainment of the CO National Ambient Air Qualify Standards (NAAQS) as expeditiously as practicable.

EFFECTIVE DATE: This final rulemaking becomes effective on January 30, 1987.

ADDRESSES: Copies of the redesignation requests, technical support documents and the supporting air quality data are available at the following addresses: (It is recommended that you contact Steven D. Griffin, at (312) 353–3849 before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Minnesota Pollution Control Agency, Division of Air Quality, 1935 West County Road B–2, Roseville, Minnesota 55113.

Copies of this revision to the Minnesota SIP are available for inspection at:

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC.

The Office of the Federal Register 1100 L Street, NW. Room 8301 Washington, DC 20408

FOR FURTHER INFORMATION CONTACT: Steven D. Griffin, (312) 353–3849.

SUPPLEMENTARY INFORMATION: On June 16, 1980 (45 FR 40579), USEPA approved the CO SIP for air quality control region (AQCR) 131. AQCR 131 is comprised of the Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington, which includes the Minneapolis-St. Paul area. The SIP included such measures as the Federal Motor Vehicle Control Program (FMVCP), along with a transportation control plan (TCP). The FMVCP allows for CO reduction allowances based on emissions controls for late-model

vehicles. Minneapolis-St. Paul's TCP consists of reductions based on a bus-freeway project, computerized traffic management, a fringe parking program, stricter enforcement of traffic ordinances, improved transit system, and the development of Hennepin and First Avenue North as a one-way street pair. These measures were designed to ensure attainment and maintenance of the CO NAAQS by December 31, 1982.

Despite the implementation of the measures contained in the 1980 SIP, a monitor located at the intersection of University and Snelling Avenues in the City of St. Paul continued to record violations of the CO NAAQS after December 31, 1982. USEPA formally notified the State, in a February 24, 1984, letter to the Governor, that the CO SIP for the City of St. Paul (Ramsey County) was deficient, and a revised SIP was requested of the Minnesota Pollution Control Agency (MPCA).

This notice of SIP deficiency was issued pursuant to section 110(a)(2)(H) of the Act. In response to the notice of SIP deficiency, MPCA submitted two requests for rulemaking action to USEPA: (1) On June 18, 1984, MPCA submitted to USEPA a request to redesignate all of AQCR 131 to attainment for CO, excluding only the intersection of Snelling and University Avenues; and (2) on May 20, 1985, MPCA submitted a COSIP revision for the Snelling/University intersection. For the purposes of today's rulemaking, only the CO SIP revision for the Snelling-University intersection will be discussed. For a discussion of the redesignation request for AQCR 131, see 51 FR 33750 (September 23, 1986).

SIP Revision for the Snelling/University Intersection

A. Background

Snelling Avenue is a major north-south thoroughfare in the City of St. Paul and carries 30,000 to 35,000 vehicles per day. University Avenue is a major east-west thoroughfare connecting the Cities of Minneapolis and St. Paul and carries 17,000 to 25,000 vehicles per day. Due to the large amount of traffic on Snelling and University Avenues, MPCA began monitoring for CO near the intersection of these thoroughfares in August 1979. Since the start of this monitoring, the 8-hour CO standard has been consistently violated, despite implementation of the 1980 CO SIP. In 1982, the Snelling/University monitor recorded 30 exceedances of the 8-hour standard. The following contains a further discussion of the transportation control measures (TCMs) and the modeled attainment demonstration relating to the CO SIP. Review of this revision was based on USEPA's *Guidance Document for Correction of Part D SIPs for Nonattainment Areas*, January 27, 1984.

B. SIP Status

The Metropolitan Council of the Twin Cities Area (the Council) was the lead agency in the preparation of the revised TCP. The May 20, 1985, submittal included the Council's proposal to improve traffic flow along University and Snelling Avenues. The actions studied included signal timing upstream of the intersection, termed "GPGN progression", which was designed to allow good signal progression on northbound and southbound Snelling Avenue, perfect progression on westbound University Avenue and, if necessary, no progression for eastbound traffic. (For the purposes of this discussion, 'progression' is the relative flow of traffic from one signal to the next.) Also studied was a parking prohibition on University Avenue between Asbury and Fry (within 1 block in either direction of the Snelling Avenue intersection).

Based on the Council's proposal, on April 23, 1985, the MPCA Board approved the following:

(a) Implementation of the improved (GPGN) signal progression upstream of the Snelling/University intersection by December 31, 1987, to provide for attainment of the CO NAAQS; and

(b) Implementation of a parking ban on University Avenue by December 31, 1989, to ensure continuing maintenance of the CO NAAQS.

The City of St. Paul has agreed to implement any TCMs approved as part of the CO SIP. A letter dated April 17, 1986, from MPCA documents the City of St. Paul's commitment to implement the above measures.

On August 26, 1986 (51 FR 30378), USEPA proposed to approve Minnesota's plan for the Snelling/University intersection based on implementation of the 2 TCMs discussed above within the stated deadlines. A 30-day public comment period was provided, however, no public comments were received by USEPA. Therefore, USEPA is approving Minnesota's plan based on its technical merits as discussed in USEPA's technical support document. (Copies of this document as well as other materials relating to this rulemaking action may be obtained by contacting Minnesota or USEPA as described earlier in this notice.) USEPA believes that this SIP revision provides for attainment of the CO NAAQS at the University and Snelling intersection by December 31, 1987. In addition, USEPA believes that implementation of the parking ban will ensure continued maintenance of the CO NAAQS after the attainment date, as evidenced by the modeling analysis.

Conclusion

USEPA approves MPCA's request to revise the CO SIP for the Snelling/University intersection. This SIP revision includes a commitment to implement the following measures:

1. GPGN signal progression, no later than December 31, 1987.

2. The University Avenue parking ban, no later than December 31, 1989.

This action does not constitute approval of an attainment demonstration for intersections other than the Snelling/University intersection. Any future rulemaking on this area, or portions thereof, will be based on attainment demonstrations submitted by MPCA.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 2, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Carbon monoxide, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Minnesota was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: November 28, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart Y—Minnesota

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1220 is amended by adding paragraph (c)(23) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(23) On May 20, 1985, and on April 17, 1986, the State submitted a carbon monoxide plan for the intersection of Snelling and University Avenues in the City of St. Paul. The plan committed to improved signal progression through the intersection by December 31, 1987, and a parking ban on University Avenue within 1 block in either direction of the intersection with Snelling Avenue by December 31, 1989.

(i) Incorporation by reference.

(A) Amendment to Air Quality Control Plan for Transportation for the Metropolitan Council of the Twin Cities Area dated January 28, 1985.

(B) Letter from Minnesota Pollution Control Agency, dated April 17, 1986, and letter from the City of St. Paul, dated April 1, 1986, committing to implementing of transportation control measures.

[FR Doc. 86-27654 Filed 12-30-86; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A-4-FRL-3134-4; TN-028]

Approval and Promulgation of Implementation Plans, Tennessee; Nonregulatory Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On January 28, 1986, the State of Tennessee submitted five Board Orders for approval by EPA. Today EPA approves Tennessee Board Orders 2–86, 3–86, and 5–86 in order to make them federally enforceable. Board Orders 1–86 and 4–86 cannot be approved by EPA because Tennessee does not have federally approved 111(d) plans for fluorides and total reduced sulfur. Order 1–86 grants Consolidated Aluminum Company a variance to operate without fluoride control equipment until January 15, 1987. Order 2–86 approves a revised State Implementation Plan permit for the Tennessee Eastman Company specifying allowable visible emissions during startup and shutdown. Order 3–86 grants a variance to the Tennessee Valley Authority to use six-minute opacity data averaging to demonstrate compliance. Order 4–86 granted a variance from January 22, 1986, until April 22, 1986, to Tennessee River Pulp and Paper Company to emit greater concentrations to total reduced sulfur than the regulations allow. Order 5–86 grants a variance until January 15, 1987, to the Texas Gas Transmission Corporation from Tennessee requirements for testing and monitoring for nitrogen oxides by new sources.

DATE: This action will be effective on March 2, 1987 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland St., NE., Atlanta, Georgia 30365

Library, Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC

Division of Air Pollution Control, Tennessee Department of Health and Environment, Customs House, 4th Floor, 701 Broadway, Nashville, Tennessee 37219

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn Hughes, Air Programs Branch, EPA Region IV at the above address and telephone number 404/347–3286 or FTS 257–3286.

SUPPLEMENTARY INFORMATION: On January 29, 1986, the State of Tennessee submitted five nonregulatory revisions to their State Implementation Plan. The revisions were adopted by the State Board at the November 5, 1985, public hearing.

Board Order 1–86 grants a variance to the Consolidated Aluminum Company to operate without fluoride control equipment until January 15, 1987. The company is in the process of determining whether it is economically feasible to continue operations after 1986. The State felt it was unreasonable to force the company to install pollution control equipment because consolidated aluminum may decide to shut down at the end of 1986. If the company decides to remain in operation after January 15, 1987, without fluoride control equipment, a civil penalty will be assessed. The size of the civil penalty will be based upon both the number of pots operated versus the number of pots available prior to the present demolition project and the progress in installation of fluoride controls.

Board Order 2–86 approves a revised State Implementation Plan permit for the Tennessee Eastman Company. Four conditions have been added to the original permit regarding allowable visible emissions during startup and shutdown. Condition 5, the first addition, specifies the allowable visible emissions during startup and shutdown based on the federally approved State regulation on the choice of Visible Emission Standard for Certain Fuel Burning Equipment. Condition 6 refers to the particulate emissions source testing schedule of Boilers #23–29 as previously agreed upon in a letter between Harold Hodges of the Division of Air Pollution Control and J.C. Edwards of Tennessee Eastman. Conditions 7 and 8 refer to quality assurance conditions for opacity monitoring systems serving Boilers #23–29 and the operational availability conditions for opacity monitoring systems used in determining the compliance of Boilers #23–29.

Board Order 3–86 grants a variance to the Tennessee Valley Authority to use six-minute opacity data averaging to demonstrate compliance with the visible emission standard in a certificate of validation.

Presently the visible emissions from this fuel-burning installation are covered by the State regulation which requires that visible emissions from fuel burning be determined utilizing six-minute data averages. However, the company is operating under a certificate of validation which requires the visible emissions to be determined by utilizing one-minute data averages. The certificate of validation allows for a liberalization of a source's visible emission standards if compliance with the mass emission standards and certain other requirements are satisfied. The Tennessee Valley Authority is in compliance with the conditions of the certificate of validation and the variance is issued for regulation under the rule using a six-minute opacity data averaging for visible emission compliance.

Order 4–86 granted a variance from January 22, 1986, until April 22, 1986, to Tennessee River Pulp and Paper Company to emit greater concentrations of total reduced sulfur than the regulations allow. Tennessee River Pulp and Paper Company was installing air pollution control equipment to meet the emission limitations of total reduced sulfur from the lime kilns in excess of 40 ppm by volume. Unforeseen equipment delivery delays prevented the timely installation of the control equipment by the compliance deadline, January 22, 1986. The State investigated the situation and the conclusion reached was that by April 22, 1986, all the equipment should be installed and operational.

Order 5–86 grants a variance until January 15, 1987, to the Texas Gas Transmission Corporation from the Tennessee New Source Performance Standard (NSPS) requirement of testing

and monitoring for nitrogen oxides. A revision to the Tennessee NSPS, when effective, will remove this requirement of testing and monitoring. The revised federal NSPS, promulgated on January 27, 1986, in 47 FR 3770, deleted the requirement.

Final Action

Since Board Orders 2–86, 3–86, and 5–86 are consistent with EPA policy and requirements, they are hereby approved. No action will be taken on Board Orders 1–86 and 4–86 because they are being returned to the State. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments this action will be withdrawn and two subsequent notices will be published before the effective date. 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.

Under 5 U.S.C. 605(b), I certify that these SIP revisions will not have a significant economic impact on a substantial number of small entities.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 2, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Incorporation by reference.

Dated: December 19, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(72) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(72) Five Board Orders were submitted on January 29, 1986, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(A) Board Order 2–86 from Tennessee Department of Health and Environment, became State-effective on January 15, 1986.

(B) Board Order 3–86 from Tennessee Department of Health and Environment, became State-effective on January 15, 1986.

(C) Board Order 5–86 from Tennessee Department of Health and Environment, became State-effective on January 15, 1986.

(ii) Other material—none.

[FR Doc. 86–29352 Filed 12–30–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–36135; FRL–3137–6]

Interim Policy for Sulfiting Agents on Grapes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Policy.

SUMMARY: This notice announces EPA's interim policy regarding the use of sulfiting agents on grapes. This policy is effective immediately. Until a tolerance is established for sulfur dioxide residues in or on grapes, EPA concludes that grapes treated with sulfiting agents can be allowed to be marketed provided it is certified by the shippers that the grapes contain no detectable residues of sulfur dioxide when tested by the modified Monier-Williams method.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: By mail:

Walter C. Francis, Disinfectants Branch, Registration Division (TS–767C) Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 711 CM No. 2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–2148).

SUPPLEMENTARY INFORMATION: FDA announced in the Federal Register of July 9, 1986 (51 FR 25021) that it was revoking the Generally Recognized as Safe (GRAS) status for the use of sulfiting agents as preservatives on fruits and vegetables to be served or sold raw to consumers. This action by FDA did not include the pesticidal use of sulfiting agents on grapes (which also has historically been treated as a GRAS use) because this use is subject to EPA jurisdiction. Since that time EPA has completed a review of the FDA data and other available information to determine the status of this use under FIFRA and section 408 of the Federal Food, Drug, and Cosmetic Act.

In its July 9, 1986 Notice, FDA concluded that there is no longer a basis to find that the use of sulfites as preservatives on fruits and vegetables intended to be served raw or sold raw to consumers is GRAS and that this use poses a risk to that discrete and relatively small segment of the population which is sulfite sensitive. EPA has reviewed the data evaluted by FDA pertaining to sulfite sensitivity that were cited in the Federal Register of August 14, 1985 (50 FR 32834), and additional information set forth in the Federal Register of July 9, 1986 (51 FR 25012 and 25021), and agrees with the conclusions reached by FDA with respect to this potential adverse effect to individuals who are sulfite sensitive.

There are two intrastate registrations for the use in the State of California of sulfur dioxide as a fungicide on grapes. The registrants holding these intrastate registrations for sulfiting agents on grapes have complied with the applicable EPA requirements in 40 CFR 162.17. Thus, these registrations are valid for use in the State of California, even though no tolerance or exemption from the need for a tolerance exists for the suflur dioxide residues resulting from this use. EPA has requested that the intrastate registrants supply the studies needed to support full Federal registration. Such registration would include the establishment of a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act for sulfur dioxide residues in or on grapes.

In addition to the use of sulfiting agents on grapes in California, sulfiting agents are also used to treat grapes imported into the United States from Chile and presumably from other countries.

EPA has reviewed a petition from a group of Chilean grape exporters and producers of sulfite-containing pads for a tolerance of 20 parts per million (ppm) for residues of sulfur dioxide on grapes. A review of the data submitted in support of the tolerance petition indicates that insufficient information is currently available to establish a

tolerance. In particular, EPA needs additional information in the areas of validation of the residue method to support claims for a more sensitive method, cold storage dissipation, and the nature of the residue (bound vs. free residue). EPA has discussed these deficiencies with the petitioners and has asked them to submit additional data. The generation and review of these data will take at least 9 months.

Since the health effect of concern is sulfite sensitivity, no additional animal toxicity data are required under 40 CFR 158.135 to support this petition, or the registration of sulfur dioxide pesticide products, including gas and sulfite-containing pads. If EPA receives information indicating health concerns other than sulfite sensitivity, a reevaluation of the toxicological data base for sulfites will be undertaken.

The absence of a tolerance for residues of sulfur dioxide on grapes poses an immediate problem for the Chilean table grape importers who have been treating grapes with sulfiting agents for over a decade. Without treatment with sulfiting agents, it may be difficult for most grape shipments from Chile to arrive at United States ports in acceptable condition. Chilean grapes represent 20 to 30 percent of the fresh table grapes consumed in the United States and supplement the California grape supply, providing a year-round supply of this commodity to the American consumer.

The Chilean exporters and the producers of sulfite-containing pads have submitted information to EPA since they filed their tolerance petition that they believe demonstrates that, at time of entry into the United States, sulfite-treated grapes will have residues of less than 10 ppm sulfur dioxide as determined by the modified Monier-Williams method. This is the official method of the Association of Official Analytical Chemists and is used by FDA for its enforcement procedures as set forth in 21 CFR 101.100(a)(4).

In order to alleviate risk concern about sulfite sensitive reactions, while permitting the shipment of sulfite-treated grapes into and within the United States, EPA in consultation with FDA has developed an approach incorporating the following measures:

1. Residues of sulfites (determined as sulfur dioxide) on grapes must be below the current level of detection, i.e., less than 10 ppm when the grapes are offered for entry into the United States or are otherwise introduced into interstate commerce.

2. The shipping containers of both foreign and domestic grapes must be provisions of the Federal Food, Drug, and Cosmetic Act section 403(l) which requires shipping containers to be labeled when a raw agricultural commodity has received post-harvest pesticide treatment.

3. EPA requires domestic and foreign shippers to have a certification program acceptable to FDA to assure that residue levels will be less than 10 ppm. In most circumstances, shipments must be accompanied by a valid certificate of analysis documenting that the grapes do not contain detectable levels of sulfur dioxide. FDA will monitor this program to assure compliance.

4. Any shipment found to have detectable levels of sulfur dioxide residues (10 ppm or higher) will be deemed to be adulterated and subject to seizure or detention by FDA.

5. Any shipment of sulfite-treated grapes not covered by a certification program will be deemed to be adulterated and subject to seizure or detention by FDA.

EPA is aware that there may be some risks to sulfite sensitive individuals from the presence of low levels of sulfites in grapes; however, EPA believes that the measures announced in this notice will minimize this risk. In establishing this policy, EPA has given consideration to the importance of a year-round supply of grapes, the economic impact which would result from a curtailment of grape shipments, the many years that sulfites have been used to treat grapes without evidence of adverse effects, and the fact that only a discrete segment of the population is sulfite sensitive. Therefore, EPA has concluded based on current information the benefits from the use of sulfiting agents on grapes outweigh any risk associated with their use.

This policy is an interim measure to permit shipment of sulfite-treated grapes for one year, and takes effect immediately. During this period EPA and FDA will work jointly to assure that the foreign and domestic grape shippers adhere to this policy. In addition, EPA will move quickly to consider the establishment of a permanent tolerance for sulfur dioxide in or on grapes and registration under section 3 of FIFRA of sulfite pesticide products for the 1988 season.

Dated: December 24, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-29489 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 761

[OPTS-62035E; FRL-3136-4]

Polychlorinated Biphenyls; Clarification of Use of Electrical Transformers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Interpretation of Tranformer Fire Regulations.

SUMMARY: This notice clarifies several provisions of the EPA's regulations governing the use of electrical transformers containing polychlorinated biphenyls (PCBs). These clarifications/interpretations were requested by Mississippi Power Company (hereafter, Mississippi Power) in the context of settlement negotiations with EPA following the filing of a petition for review of the PCB Transformer Fires regulations published in the **Federal Register** of July 17, 1985 (50 FR 29170).

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

The Environmental Protection Agency issued a final rule, published in the **Federal Register** of July 17, 1985 (50 FR 29170), amending the PCB Electrical Use Rule, published in the **Federal Register** of August 25, 1982 (47 FR 37342). The July 17, 1985 rule (hereafter, the PCB Transformer Fires Rule) placed additional restrictions and conditions on the use of PCB Transformers, particularly PCB Transformers located in or near commercial buildings. After the promulgation of the PCB Transformer Fires Rule, Mississippi Power filed a petition for review of the rule. During settlement negotiations with EPA, Mississippi Power raised 10 questions seeking clarification of various provisions of the PCB Transformer Fires Rule. EPA agreed to provide answers to these 10 questions and to issue the 10 questions and the answers to these questions for publication in the **Federal Register.**

The 10 questions concern: (1) The PCB Transformer registration requirements; (2) the requirement for the removal of stored combustibles; (3) the requirement for the reporting of fire-related incidents to the National Response Center; (4) the definition of commercial building; (5) the status of mineral oil transformers which

are found to contain over 500 parts per million (ppm) PCBs; (6) the ban on the installation of PCB Transformers in or near commercial buildings; and (7) the requirement for the labeling of the exterior of PCB Tranformer locations.

II. Questions and EPA Responses

A. PCB Transformer Registration Requirements

1. *Statement of requirement.* 40 CFR 761.30(a)(1)(vii) requires that:

> As of December 1, 1985, PCB Transformers in use in or near commercial buildings must be registered with building owners. For PCB Transformers located in commercial buildings, PCB Transformer owners must register the transformers with the building owner of record. For PCB Transformers located near commercial buildings, PCB Transformer owners must register the transformers with all owners of buildings located within 30 meters of the PCB Transformer(s). Information required to be provided to building owners by PCB Transformer owners includes, but is not limited to:
>
> (A) The specific location of the PCB Transformer(s).
>
> (B) The principal constituent of the dielectric fluid in the transformer(s) (e.g., PCBs, mineral oil, silicone oil).
>
> (C) The type of transformer installaton (e.g., 208/120 volt network, 208/120 volt radial, 208 volt radial, 480 volt network, 480/277 volt network, 480 volt radial, 480/277 volt radial).

2. *Questions and answers regarding the registration requirement—Question 1.* Does the owner of a PCB Transformer have to register a PCB Transformer located within the interior of, on the roof of, or attached to the exterior wall of a building with all building owners within 30 meters of the transformer?

Answer. Transformers located within the interior of buildings are only required to be registered with the building owner where the transformer is located. PCB Transformers attached to buildings, including those on roof tops, must be registered with all building owners of buildings within 30 meters of the PCB Transformer.

Question 2. For purposes of compliance with 40 CFR 761.30 (a)(1)(vii), is it sufficient to register a PCB Transformer with a building's property manager or managing agent in cases where determining the building owner of record would involve title searches, and with the building owner's association or managing agent when a condominium is involved?

Answer. Yes, registration of a PCB Transformer with the property manager, managing agent, or building owner's association under the circumstances described would be acceptable for compliance monitoring purposes. The principle objective of requiring building owner registration is to educate persons responsible for the operation of buildings. EPA did not assume that the costs involved in completing this registration would include conducting a title search. EPA believes that if persons responsible for operating buildings are aware that a fire in their building involves a PCB Transformer that it will be less likely for the building to be prematurely reopened for occupancy. Registration of PCB Transformers with a building's property manager or managing agent (in situations where the building owner is not readily identifiable) is acceptable and accomplishes the objective of the registration requirement.

Similarly, in the case of condominiums, EPA did not assume that a utility would be required to register a single transformer with hundreds of owners. Registration of PCB Transformers with the condominium owners association or managing agent is acceptable and accomplishes the objective of the registration requirement.

B. Removal of Stored Combustibles Requirement

1. *Statement of requirement.* 40 CFR 761.30(a)(1)(viii) requires that:

> As of December 1, 1985, combustible materials, including, but not limited to paints, solvents, plastics, paper, and sawn wood must not be stored within a PCB Transformer enclosure (i.e., in a transformer vault or in a partitioned area housing a transformer); within 5 meters of a transformer enclosure, or, if unenclosed (unpartitioned), within 5 meters of a PCB Transformer.

2. *Questions and answers regarding the removal of stored combustibles requirement—Question 3.* Does the provision restricting the storage of combustibles within 5 meters of a PCB Transformer or an enclosure containing such a transformer (40 CFR 761.30(a)(1)(viii)) apply when the combustible materials are within 5 meters of the PCB Transformer or its enclosure but are separated from the PCB Transformer or its enclosure by a wall?

Answer. EPA has required that combustibles not be stored within 5 meters of an enclosure containing a PCB Transformer to prevent persons from simply moving stored combustible from inside an enclosure to the other side of the enclosure. EPA believed that the moving of stored combustibles in this manner would do little to reduce the risk of the stored combustible starting a fire or feeding a fire involving a PCB Transformer. However, implicit in this was an assumption that the enclosure itself would not prevent a barrier to fire. For PCB Transformer fires, EPA believes that under certain circumstances a wall could present an adequate barrier to fire. However, the wall must be constructed in a manner which would reduce the risk of stored combustibles starting a fire or feeding a fire involving a PCB Transformer. For example, a 2 to 3 hour fire-rated enclosure could reduce such a risk. If a wall presents a similar barrier to fire, the 5 meter rule would not apply.

Question 4. Does the removal of stored combustibles requirement apply to bulk storage of fuel, such as gasoline, heating oil, and natural gas?

Answer. No. The Agency did not intend that the removal of stored combustibles requirement apply to bulk fuel storage. In some regions, local fire codes dictate that PCB equipment be used in such areas because of the risks of catastrophic explosions and fires in the event of a fire in the electrical equipment.

C. Requirement for the Reporting of Fire-Related Incidents

1. *Statement of requirement.* 40 CFR 761.30(a)(1)(xi) requires, among other things, that:

> If a PCB Transformer is involved in a fire-related incident, the owner of the transformer must immediately report the incident to the National Response Center (toll-free 1-800-424-8802; in Washington, DC 202-426-2675). A fire-related incident is defined as any incident involving a PCB Transformer which involves the generation of sufficient heat and/or pressure (by any source) to result in the violent or non-violent rupture of a PCB Transformer and the release of PCBs. . . .

2. *Question and answer regarding the reporting requirement—Question 5.* Does the requirement for the reporting of fire-related incidents apply to situations where PCBs have been spilled but no fire is present?

Answer. No. EPA recognizes that the term fire-related incident covers a broad spectrum of incident types. In defining "fire-related incident" broadly, EPA intended to have been seemingly minor "fires" reported. This is because even following "minor" incidents, polychlorinated dibenzofurans (PCDFs) have been found, sometimes in areas remote from the transformer location. EPA does recognize, however, that small leaks and spills do occur and that these leaks and spills are not associated with electrical faults or transformer rupture. These are not fire-related incidents and are not required to be reported as such. Small releases (less than 1 gallon of PCBs) from pressure relief devices are

also not considered to be fire-related incidents.

D. The Definition of Commercial Building

1. *Statement of the definition.* In 40 CFR 761.3, "In or Near Commercial Buildings" is defined as:

> . . . within the interior of, on the roof of, attached to the exterior wall of, in the parking area serving, or within 30 meters of a non-industrial, non-substation building. Commercial buildings are typically accessible to both members of the general public and employees, and include: (1) Public assembly properties, (2) educational properties, (3) institutional properties, (4) residential properties, (5) stores, (6) office buildings, and (7) transportation centers (e.g., airport terminal buildings, subway stations, bus stations, or train stations).

2. *Question and answer regarding the definition of commercial building—Question 6.* How many units must there be in a residence for it to be considered a "commercial" building?

Answer. The definition of "commercial" building includes residential properties (e.g., apartments, hotels, dormitories, condominiums). In promulgating the rule, EPA was concerned with residential properties where groups of people live and not really single family homes and the like. Thus, all residential properties (notwithstanding the number of units involved) are covered by the rule, except single family homes.

Question 7. If a generating station or electrical substation has a few offices within the station, does this mean that the station is considered a "commercial" building?

Answer. No. PCB Transformers used in or near office buildings are operated in a fundamentally different manner from transformers used in or near industrial facilities and electrical substations. PCB Transformers used in or near commercial buildings are typically configured in a network fashion and are (currently) not typically equipped with special protective equipment such as current-limiting fuses or temperature/pressure sensors and disconnect equipment. The number of people potentially at risk of exposure is much higher in commercial buildings than in industrial facilities and electrical substations. EPA recognizes that industrial facilities and electrical substations may have a few offices on site used by workers responsible for monitoring plant/substation operations. The fact that an industrial facility or electrical substation may have a few such offices does not mean that the facility is considered a commercial building. However, if there is a building, such as an office building, on the site which is dedicated to uses other than the direct monitoring of plant/substation operations, these office buildings are considered to be commercial buildings. In situations where a building is clearly used for dual purposes, i.e., a substantial number of floors or amount of square footage is dedicated to other than the manufacture or storage of products, then the location must be carefully evaluated relative to the following:

a. Is the PCB Transformer in or near the building located in an area where it is clearly visible to workers during the routine conduct of their work? Commercial transformers are more likely to be in areas such as basements and sidewalk/underground vaults rather than in easily visible locations.

b. Is there disconnect equipment on site which provides the capability to de-energize the transformers from the location and are there people present who have been trained in the procedures for deenergizing the transformer? Commercial transformers are less likely to be able to be de-energized from an on-site location, and it is less likely that trained personnel are around to provide for the de-energization.

c. Is access to the building restricted? Commercial buildings are typically readily accessible to both members of the general public and workers.

E. The Status of Mineral Oil Transformers

1. *Statement of the requirement.* Under "PCB-Contaminated Electrical Equipment" in 40 CFR 761.3, "Oil-filled electrical equipment other than circuit breakers, reclosers, and cable whose PCB concentration is unknown must be assumed to be PCB-Contaminated Electrical Equipment. . ." (PCB-Contaminated Electrical Equipment means equipment containing 50–500 parts per million (ppm) PCBs).

2. *Question and answer regarding the status of mineral oil transformers—Question 8.* What is the regulatory status of a mineral oil transformer which is tested after the effective date of a phaseout requirement (or electrical protection requirement) and is found to contain over 500 ppm PCBs?

Answer. This issue is not unique to the PCB Transformer Fires Rule. For example, there is a PCB Transformer phaseout requirement in the August 25, 1982 PCB Electrical Equipment Rule for PCB Transformers (defined as transformers containing over 500 ppm PCBs) which pose an exposure risk to human food or animal feed. Since the regulations "allow" owners of mineral oil transformers which in reality may contain over 500 ppm PCBs to assume that these transformers are PCB contaminated, the discovery (after the effective date for phaseout or electrical protection) that a mineral oil transformer is a PCB Transformer does not (alone) mean that the transformer has been used in violation of the PCB regulations. But, once such a determination is made, efforts must be initiated immediately to bring the transformer into compliance in accordance with the following schedule:

a. Reporting of fire-related incidents: effective immediately after discovery.

b. Marking of the transformer: effective immediately after discovery.

c. Marking the vault door, machinery room door, fence, hallway or other means of access to the PCB Transformer: effective immediately after discovery.

d. Registering the PCB Transformer with fire response personnel with primary jurisdiction and with the building owner: Within 30 days of discovery.

e. Installation of electrical protective equipment on radial PCB Transformers and non-sidewalk vault, lower secondary voltage network transformers in or near commercial buildings: within 18 months of discovery or by October 1, 1990, whichever is later.

f. Removal of non-sidewalk vault, lower secondary voltage network transformers in or near commercial buildings if electrical protective equipment is not installed: within 18 months of discovery or by October 1, 1993, whichever is later.[1]

g. Removal of lower secondary voltage network PCB Transformers (located in sidewalk vaults) in or near commercial buildings: within 18 months of discovery or by October 1, 1993, whichever is later; [1]

h. Retrofill and reclassification of a radial PCB Transformer or a lower or higher secondary voltage network PCB Transformer (located in other than sidewalk vaults) in or near a commercial building: within 18 months or by October 1, 1990, whichever is later (this is an option in lieu of other requirements).

i. Retrofill and reclassification of a lower secondary voltage network PCB

[1] EPA is in the process of proposing an amendment to the PCB Transformer Fires Rule which would allow owners of lower secondary voltage network PCB Transformers (located in or near commercial buildings) an alternative to electrical protection by 1990. The alternative that EPA is considering proposing is removal of these transformers by October 1, 1993. Should EPA fail to promulgate this amendment, the operative date will be October 1, 1990.

Transformer (located in sidewalk vaults) in or near a commercial building: within 18 months or by October 1, 1993, whichever is later.[1]

F. The Ban on the Installation of PCB Transformers

1. *Statement of the requirement.* 40 CFR 761.30(a)(1)(iii) provides that: "As of October 1, 1985, the installation of PCB Transformers (which have been placed into storage for reuse or which have been removed from another location) in or near commercial buildings is prohibited."

2. *Question and answer regarding the ban on installation of PCB Transformers—Question 9.* Does the prohibition on installation of PCB Transformers after October 1, 1985 apply to installation in emergency situations when an alternative transformer is unavailable or where reclassification after retrofilling is involved?

Answer. The objective of the prohibition on the installation of PCB Transformers after October 1, 1985, is to: (1) Stop the installation of PCB Transformers in newly constructed buildings, (2) stop the installation of PCB Transformers in locations where they are presently not being used, and (3) stop the installation of PCB Transformers to replace PCB Transformers which have failed. However, in its assessment of the impact of item (3) above, EPA assumed that transformers other than PCB Transformers would be available for installation. EPA did not assume that one potential impact of the prohibition could be the denial of electrical service to utility customers following the failure of a transformer in the system. EPA perceives the problem of having only PCB Transformers available for installation to be a short-term problem. As soon as replacement transformers are available or retrofill and reclassification occurs, there will be no real possibility that compliance with this prohibition would result in denial of electric service to utility customers. EPA is in the process of issuing a proposed amendment to the October 1, 1985, prohibition to allow installation on an emergency basis until October 1, 1990, and the use of emergency installed PCB Transformers for one year from the date of installation or until October 1, 1990, whichever is earlier. An "emergency" would exist for purposes of this rule when no appropriate non-PCB or PCB contaminated transformer is available and there is not enough time to order new transformers or to retrofill the existing equipment and have it available for emergency use.

In addition, EPA recognizes the prohibition against installation of PCB Transformers may seriously impede the reclassification of many PCB Transformers. Therefore, EPA is in the process of issuing a proposed amendment to the October 1, 1985, prohibition to allow installation of retrofilled PCB Transformers after 1985 only for purposes of reclassification, as specified in 40 CFR 761.30(a)(2)(v).

G. The Labeling of PCB Transformer Locations

1. *Statement of the requirement for the labeling of the exterior of PCB Transformer locations.*

40 CFR 761.40(j) requires that: "As of December 1, 1985, the vault door, machinery room door, fence, hallway, or means of access (other than grates and manhole covers) to a PCB Transformer must be marked with the mark M_L. The mark must be placed so that it can be easily read by firemen fighting a fire involving this equipment."

2. *Question and answer regarding the requirement for the labeling of PCB Transformer locations—Question 10.* Are labeling systems devised prior to the rule adequate for compliance purposes?

Answer. The purpose of labeling the exterior of PCB Transformer locations is to provide emergency response personnel with warning that a PCB Transformer may be involved in a fire that they have been asked to extinguish. EPA required the use of one type of label to provide consistency and to facilitate compliance monitoring efforts. EPA required the use of the PCB identification label because EPA assumed that most PCB Transformer owners had these labels already and would not have to make special purchases.

EPA does not want to unfairly penalize owners who have taken the initiative and have already labeled exterior locations. EPA, therefore, is in the process of issuing a proposed amendment to permit the continued use of an alternative label if several conditions have been met. These include initiation of the program before August 15, 1985; coordination prior to that time between the owner and the emergency response personnel affected; the appropriate emergency response personnel's recognition of what the alternative mark means; and the Regional Administrator has been provided with information that these conditions have been met.

III. Record to Support Clarifications/ Interpretations

1. Official rulemaking record from "Polychlorinated Biphenyls in Electrical Transformers, Final Rule, published in the **Federal Register** of July 17, 1985 (50 FR 29170).

2. USEPA, OPTS, EED, Evaluation of the Suffiency of Current and Projected PCB Disposal Capacity To Meet Demand Requirements. July 10, 1986. Prepared under Contract #68–02–4235 by Putnam, Hayes & Bartlett, Inc.

3. Correspondence.

The record is available for review and copying in Room NEG009 of the EPA Headquarters at the address given above.

List of Subjects in 40 CFR Part 761

Hazardous substances, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

Dated: December 23, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86–29355 Filed 12–30–86; 8:45 am]

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Proposed Rules

Federal Register
Vol. 51, No. 250
Wednesday, December 31, 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 210, 220 and 226

Revision of Infant Meal Pattern for Child Nutrition Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service of the U.S. Department of Agriculture proposes to amend regulations governing the infant meal pattern requirements for the National School Lunch Program, the School Breakfast Program, and the Child Care Food Program. The infant meal pattern requirements currently differ among these meal service Child Nutrition Programs and do not reflect the most recent pediatric nutrition recommendations. The Department is proposing revisions that will establish consistency in the infant meal pattern requirements among these meal service Child Nutrition Programs and will reflect more recent information regarding infant feeding practices.

DATE: Comments must be postmarked on or before March 2, 1987.

ADDRESS: Comments may be mailed to Patricia N. Daniels, Branch Chief, Nutrition Science and Education Branch, Nutrition and Technical Services Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. All written comments will be available for inspection in Room 602, Nutrition and Technical Services Division, 3101 Park Center Drive, Alexandria, Virginia, during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Daniels at the address listed above or call (703) 756–3554.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291 and has been classified nonmajor because it does not meet any of the three criteria of the Executive Order. It will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant impact on competition, employment, investment, productivity, innovation or on the ability of U.S. enterprises to compete with foreign based enterprises in domestic or export markets. Thjis proposal provides greater flexibility to schools and institutions participating in the Child Nutrition Programs, rather than imposing more restrictive requirements upon them.

These programs are listed in the Catalog of Federal Domestic Assistance under Numbers 10.553, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985)

The proposal has also been reviewed with regard to the provisions of Pub. L. 96–354. Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that the proposal does not have a significant economic impact on a substantial number of small entities.

This proposed rule does not contain reporting and record keeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act.

Background

The requirements for the infant meal pattern differ among the meal service Child Nutrition Programs administered by the Food and Nutrition Service. These differences can be attributed to the fact that the meal patterns were developed and issued at different times. The agency has received requests to establish consistency in the infant meal pattern due to the potential for confusion in agencies which administer more than one meal service Child Nutrition Program. Also, same-aged infants in the National School Lunch Program, School Breakfast Program, and Child Care Food Program are now being offered different meal patterns. In addition, there have been requests from child care providers, parents, and health care providers to update the infant meal pattern requirements to reflect current recommended infant feeding practices. Recently comments were submitted during the 7 CFR Part 210 rewrite of the National School Lunch Program regulations. Commenters were concerned that the current infant meal pattern requirements are not consistent with current pediatric nutrition recommendations. New information on infant nutrition is available which should be incorporated into the infant meal pattern requirements. The proposed rule will serve the dual purpose of: (1) Providing a standard infant meal pattern that will be uniformly applicable to all meal service Child Nutrition Programs, and (2) incorporating the advice of leading authorities on infant nutrition into the infant meal pattern requirements.

The Summer Food Service Program regulations require that the infant meal pattern for that program be the same as the Child Care Food Program infant meal pattern. Therefore, the proposed rule is applicable to the Summer Food Service Program.

The proposed rule addresses changes in the infant meal pattern requirements under the five categories discussed below: (1) Age groupings, (2) type of milk, (3) introduction of solid foods, (4) use of juice, and (5) type of meat alternates. Unless otherwise noted, comments refer to infant meal patterns in all meal service Child Nutrition Programs.

1. Age Groupings

The Department is proposing two modifications in the infant meal pattern age groupings. The first is to reword the interval "month *up to* month" to read "month *through* month." Although this is a minor modification it will help avoid confusion and provide for a clearer delineation of age groups by month.

The second modification involves a change in the breakdown of age groupings by month. The current regulations specify three age groups to allow for both the changing nutritional needs of infants during the first year of life as well as the variation in infants' growth rates. The proposed rule maintains three age groups but modifies the breakdown by month to better facilitate the introduction of solid foods into the diets of infants.

During the period between 4 and 6 months of age, infants experience considerable physiological growth and changing nutritional needs as they develop the ability to swallow nonliquid foods. The proposed rule addresses the infant's needs during this period by providing for a shorter interval in the middle age grouping (4 through 5 months instead of 4 up to 8 months). This modification allows solid foods to be introduced to the infant at either 4, 5, or 6 months of age to coincide with the infant's developmental growth. The current age groupings do not provide such flexibility for introducing foods. The rationale for this proposed change in age groupings is further described below under "Introduction of Solid Foods."

In decreasing the length of the middle age group interval, the proposed rule increases the length of the third interval from "8 months up to 1 year" to "6 months through 11 months." The proposed meal pattern requirements for this age group are flexible enough to permit the proper sequence of introducing solid foods, the proper quantity of foods, and the proper consistency of foods to meet the needs of the growing infant. Guidance materials will be developed to help the provider interpret the regulations concerning the proper feeding of solid foods.

2. Type of Milk

Breast milk or iron-fortified infant formula meet all the known nutritional needs of the infant for the first 4 to 6 months of life (with the exception of vitamin D and fluoride in breast-fed infants) and continue to be an important source of nutrients as solid foods are added to the diet. The Department recommends that breast milk or iron-fortified formula be fed to the infant for the entire first year of life. Although breast milk may be served from birth until 1 year of age, a meal containing breast milk may only be claimed for reimbursement after 4 months of age when at least one other required meal component is supplied by the school or child care facility.

The current meal pattern allows whole milk from 8 months to 1 year of age. Due to the change in age groupings in the proposed rule, whole milk may be served from 6 months of age on, as long as the infants are consuming one-third of their calories as a balanced mixture of cereal, vegetables, fruits, and other foods, and do not have medical conditions such as anemia, gastrointestinal malfunction, or allergies. This requirement is intended to prevent iron-deficiency anemia and is consistent with the American Academy of Pediatrics recommendations. Although the proposed requirements allow infants to receive one-third of their calories from such a balanced mixture of foods from 6 months of age on, as stated above, it is recommended that the introduction of whole milk be delayed until 1 year of age.

To assist the provider, guidance will be developed to help identify when infants are consuming one-third of their calories from the prescribed mixture of solid foods. The guidance will also give instructions on how to gradually change from breast milk or formula to whole milk as the consumption of solid food increases.

Reduced-fat milk, either skim or 2 percent, may not be substituted for whole milk in the infant meal pattern. Reduced-fat milk is not recommended due to the low fat content, which could result in a low level of dietary essential fatty acids.

3. Introduction of Solid Foods

The most recent information on infant feeding shows that there are no nutritional advantages to introducing solid foods to infants before 4 months of age. Between 4 and 6 months of age, an infant's nervous system, intestinal tract and kidneys have developed enough to allow the introduction of solid foods. However, because each infant develops at a different rate, it is important to provide some flexibility in the infant meal pattern concerning the appropriate time for introducing solid foods.

The current infant meal pattern requirements do not provide flexibility in introducing solid foods. They require that solid foods be introduced to all infants at 4 months of age, regardless of their developmental readiness. The National School Lunch and School Breakfast regulations also have a provision for feeding solid foods in the 0 to 4 month age group. Introducing solid foods too early may have undesirable effects including allergic reactions, overfeeding, and the establishment of poor eating habits. Between 4 and 6 months of age, the infant is first able to sit with support, to have good neuromuscular control of the head and neck, and to convey a desire for food as well as indicate disinterest or satiety.

The proposed infant meal pattern requirements do allow flexibility in introducing solid foods. Solids may be introduced at either 4, 5, or 6 months of age, coinciding with the infant's neuromuscular development. In the proposed rule, solid foods are optional in the 4 through 5 month age group; 0–3 tablespoons of infant cereal are allowed at each meal and 0–3 tablespoons of fruit or vegetable are allowed at lunch and dinner. The proposed rule allows a provider to receive reimbursement during the 4 through 5 month interval, whether or not solid foods are provided, as long as the formula requirement is met. During the 4 through 5 month interval a meal or supplement containing breast milk may only be claimed for reimbursement when at least one other required meal component is provided by the school or child care facility.

The decision to introduce solid foods into an infant's diet may be made by the parent or the infant's physician. However, guidance materials will be developed to help the provider to recognize an infant's abilities and feeding skills development. The guidance will also instruct the provider on the proper sequence and timing of introducing single ingredient foods during the first year of life as well as the proper quantity and consistency of foods.

In the current meal pattern requirements, infant cereal may be substituted for fruit or vegetable in the 8 months to 1 year age group. In the proposed pattern, the fruit and/or vegetable requirement is separate from that for infant cereal in the 6 through 11 month age group. Infant cereal is not nutritionally equivalent to fruits and vegetables, particularly with respect to iron and vitamins A and C. Infant cereal is normally replaced in the older infant's diet by other solid foods, particularly table foods of appropriate consistency, at lunch and supper. With the reduced consumption of infant cereal, meat assumes more importance as a source of dietary iron. In order to facilitate this transition, meat and its alternates are included as a substitute for infant cereal in the 6 through 11 month age group at lunch and supper. Although the protein content of infant cereal and meat is not equivalent, the "and/or" relationship between the infant cereal and meat components will not compromise the infant's nutritional status. During the first year of life, infant formula, whole milk, or breast milk contribute the major portion of protein needed by the infant.

4. Use of Juice

The current infant meal pattern for the Child Care Food Program allows fruit juice as an optional item from 4 months up to 1 year of age. The infant meal pattern for the National School Lunch and School Breakfast Programs allows fruit juice as an optional item from 8 months up to 1 year of age. The proposed infant meal pattern allows fruit juice only after 6 months of age.

The Department recommends that juice be offered from a cup, not a bottle, as soon as the infant can drink in this manner. A joint statement by the American Academy of Pediatrics and the American Academy of Pedodontics discourages the feeding of juice from a bottle. Rather, feeding juice or other liquid from a cup is encouraged to develop behaviors that may prevent "nursing bottle caries."

Developmentally, an infant is usually not ready to drink from a cup before 6 months of age. In addition, the vitamin C requirement of an infant receiving formula is met without the addition of juice in the diet and there is thus no nutritional justification for allowing juice before 6 months of age for the average infant.

Infant formula is a good source of vitamin C but whole milk is not. When whole milk is introduced into the infant's diet, a good source of vitamin C is therefore needed. In order to meet this vitamin C requirement, and aid in the absorption of iron, the proposed rule will require fruit juice at meals from 6 months to 1 year of age when whole milk is provided. The Child Care Food Program infant meal pattern will also allow fruit juice as an optional item at the supplement from 6 months of age on.

5. Type of Meat Alternate

The current Child Nutrition infant meal pattern has an optional requirement for meat or a meat alternate beginning at 4 months of age. The proposed meal pattern allows meat or a meat alternate as an option at 6 months of age or older. Meat or meat alternates include "meat, fish, poultry, egg yolk, cheese, cottage cheese, cheese food, or cheese spread."

At 1 year of age, the current Child Nutrition meal pattern requirements allow cooked dry beans or peas, and peanut butter as a meat alternate. In response to requests, the proposed rule will include cooked dry beans or peas, in the appropriate consistencies, as a meat alternate for infants at 6 months of age or older. Peanut butter will not be allowed due to its association with choking in infants. Guidance will be developed to instruct providers on the procedures for preparing cooked dry beans and peas so that they are the appropriate consistency for infants.

In summary, the Department is proposing: (1) To modify the breakdown of age groups by month and more clearly delineate the age groupings; (2) to allow the substitution of whole milk for infant formula at 6 months of age, instead of at 8 months, as long as the infants are consuming one-third of their calories from a balanced mixture of foods; (3) to provide flexibility in introducing solid foods to infants by making solids optional in the 4 through 5 month age group; (4) to require that fruit juice be provided at meals from 6 months of age on when whole milk is provided, instead of allowing it as an optional item from 4 months of age on; (5) to allow meat or a meat alternate as an option from 6 months of age on, instead of from 4 months of age on; and (6) to allow cooked dry beans and peas in the appropriate consistencies as a meat alternate.

Comments Requested

There have been requests to allow a fruit or vegetable in the Child Care Food Program's supplemental meal pattern, for infants 6 through 11 months of age, to provide an additional type of finger food for this age group. Currently, the supplemental meal pattern includes infant formula or whole milk or fruit juice, and bread or a cracker product as optional items.

The Department solicits your comments regarding amendment of the regulations to include a serving of a fruit or vegetable of the appropriate consistency as an optional second component of the supplemental meal pattern for infants 6 through 11 months of age.

The Department recognizes that there is no nutritional rationale for including a fruit or vegetable in the supplemental meal pattern at this time since the proposed rule requires a fruit or vegetable at each meal for infants 6 months of age and older. Also, the rule does not prohibit the serving of optional foods, such as a fruit or vegetable at the supplement.

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 226

Daycare, Food assistance programs, Grant programs—Health, Infants and Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Parts 210, 220, and 226 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Secs. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270, 42 U.S.C. 1751–1760, 1779, unless otherwise noted.

2. In Section 210.10 paragraph (h) is revised as follows:

§ 210.10 Requirements for lunches.

* * * * *

(h) *Infant lunch pattern.* When infants 0–1 year of age participate in the Program, an infant lunch pattern shall be served. Foods within the infant lunch pattern shall be of texture and consistency appropriate for the particular age group being served. For infants age 4 through 5 months, solid foods are optional and should be introduced only if the infant is developmentally ready. For infants 6 months to 1 year, the total amount of food authorized in the meal patterns set forth below must be served in order to qualify for reimbursement but may be offered to the infant during a span of time consistent with the infant's eating habits. Breast milk may be served in place of infant formula or whole milk from birth until 1 year of age. However, meals containing only breast milk do not quality for reimbursement. Meals containing breast milk served to infants 4 months or older may be claimed for reimbursement when at least one other required meal component is supplied by the school. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. Juice and other liquids should be offered to infants when they are ready to drink from a cup, in order to develop behaviors that may prevent "nursing bottle caries." The infant lunch pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(1) 0 through 3 months—4 to 6 fluid ounces of iron-fortified infant formula.

(2) 4 through 5 months—4 to 8 fluid ounces of iron-fortified infant formula; 0 to 3 tablespoons of iron-fortified infant cereal; and 0 to 3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(3) 6 through 11 months—(i) 6 to 8 fluid ounces of iron-fortified infant formula, or 6 to 8 fluid ounces of whole milk and 1 to 3 fluid ounces of full strength fruit juice; (ii) 2 to 4

tablespoons of infant cereal; and/or 1 to 4 tablespoons meat, fish, poultry, egg yolk, or cooked dry beans or peas, or ½ to 2 ounces (weight) of cheese or 1 to 4 ounces (weight or volume) of cottage cheese, cheese food or cheese spread of appropriate consistency; and (iii) 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 4 and 10, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779), unless otherwise noted.

2. In § 220.8 paragraph (b)(2) is revised as follows:

§ 220.8 Requirements for breakfast.

* * * * *

(b) * * *

(2) When infants up to 1 year of age participate in the Program, an infant breakfast shall be offered. Foods within the infant breakfast pattern shall be of texture and consistency appropriate for the particular age group being served. For infants age 4 through 5 months, solid foods are optional and should be introduced only if the infant is developmentally ready. For infants 6 months to 1 year, the total amount of food authorized in the meal patterns set forth below must be served in order to qualify for reimbursement but may be offered to the infant during a span of time consistent with the infant's eating habits. Breast milk may be served in place of infant formula or whole milk from birth until 1 year of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months or older may be claimed for reimbursement when at least one other required meal component is supplied by the school. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. Juice and other liquids should be offered to infants when they are ready to drink from a cup, in order to develop behaviors that may prevent "nursing bottle caries." The infant breakfast pattern shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age groups:

(i) 0 through 3 months—4 to 6 fluid ounces of iron-fortified infant formula.

(ii) 4 through 5 months—4 to 8 fluid ounces of iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified infant cereal.

(iii) 6 through 11 months—6 to 8 fluid ounces of iron-fortified infant formula, or 6 to 8 fluid ounces of whole milk and 1 to 3 fluid ounces of full strength fruit juice; 2 to 4 tablespoons of iron-fortified infant cereal; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

* * * * *

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 803, 810 and 820, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758, 1766); sec. 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. In § 226.20, paragraph (b) is revised as follows:

§ 226.20 Requirements for meals.

* * * * *

(b) *Infant meal pattern.* When infants aged up to 1 year participate in the Program, an infant meal shall be offered. Foods within the infant meal pattern shall be of texture and consistency appropriate for the particular age group being served. For infants age 4 through 5 months, solid foods are optional and should be introduced only if the infant is developmentally ready. For infants 6 months to 1 year, the total amount of food authorized in the meal patterns set forth below must be served in order to qualify for reimbursement but may be offered during a span of time consistent with the infant's eating habits. Breast milk may be served in place of infant formula or whole milk from birth until 1 year of age. However, meals containing only breast milk do not qualify for reimbursement. Meals containing breast milk served to infants 4 months or older may be claimed for reimbursement when at least one other required meal component is supplied by the child care facility. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. Juice and other liquids should be offered to infants when they are ready to drink from a cup, in order to develop behaviors that may prevent "nursing bottle caries." The infant meal shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group:

(1) Age 0 through 3 months:

(i) Breakfast—4 to 6 fluid ounces of iron-fortified infant formula;

(ii) Lunch or supper—4 to 6 fluid ounces of iron-fortified infant formula;

(iii) Supplemental food—4 to 6 fluid ounces of iron-fortified infant formula;

(2) 4 through 5 months:

(i) Breakfast—4 to 8 fluid ounces of iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified infant cereal;

(ii) Lunch or supper—4 to 8 fluid ounces of iron-fortified infant formula; 0 to 3 tablespoons of iron-fortified infant cereal; and 0 to 3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(iii) Supplemental food—4 to 6 fluid ounces of iron-fortified infant formula.

(3) 6 through 11 months:

(i) Breakfast—6 to 8 fluid ounces of iron-fortified infant formula, or 6 to 8 fluid ounces of whole milk and 1 to 3 fluid ounces of full strength fruit juice; 2 to 4 tablespoons of iron-fortified infant cereal; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(ii) Lunch or supper—6 to 8 fluid ounces of iron-fortifed infant formula, or 6 to 8 fluid ounces of whole milk and 1 to 3 fluid ounces of full strength fruit juice; 2 to 4 tablespoons of iron-fortified infant cereal and/or 1 to 4 tablespoons of meat, fish, poultry, egg yolk, or cooked dry beans or peas, or ½ to 2 ounces (weight) of cheese or 1 to 4 ounces (weight or volume) of cottage cheese or cheese food or cheese spread of appropriate consistency; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

(iii) Supplemental food—2 to 4 fluid ounces of iron-fortified infant formula or whole milk or full strength fruit juice and 0 to ½ slice of crusty bread or 0 to 2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate.

(4) The minimum amount of food components to be served as breakfast, lunch, supper or supplement as set forth in paragraphs (b), (1), (2), and (3) of this section are as follows:

CHILD CARE INFANT MEAL PATTERN

0-3 months	4-5 months	6 months-1 year
Breakfast		
4-6 oz. formula [1]	4-8 oz. formula [1]	6-8 oz. formula [1], or 6 to 8 oz. whole milk and 1-3 oz. fruit juice [2].

CHILD CARE INFANT MEAL PATTERN—Continued

0–3 months	4–5 months	6 months–1 year
	0–3 Tbsp. infant cereal [3]	2–4 Tbsp. infant cereal [3]; 1–4 Tbsp. fruit and/or vegetable.
Lunch or Supper		
4–6 oz formula [1]	4–8 oz. formula [1]	6–8 oz. formula [1], or 6 to 8 oz. whole milk and 1–3 oz. fruit juice [2].
	0–3 oz. Tbsp. infant cereal [3] (Optional).	2–4 Tbsp. infant cereal [3] and/or 1–4 Tbsp. meat, fish, poultry, egg yolk, or cooked dry beans of peas, or ½–2 oz. cheese or 1–4 oz. cottage cheese, cheese food, or cheese spread 1–4 Tbsp. fruit and/or vegetable.
	0–3 Tbsp. fruit and/or vegetable (Optional).	
Supplements		
4–6 oz. formula [1]	4–6 oz. formula [1]	2–4 oz. formula [1], or whole milk, or fruit juice [2]; 0–½ slice bread or 0–2 crackers [4].

[1] Shall be iron-fortified infant formula.
[2] Shall be full strength fruit juice.
[3] Shall be iron-fortified infant cereal.
[4] Shall be made from whole-grain or enriched meal or flour.

* * * * *

Dated: December 22, 1987.

Robert E. Leard,

Administrator.

[FR Doc. 86–29284 Filed 12–30–86; 8:45 am]

BILLING CODE 3410–30–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Request for Comments on Development of Policy for Nuclear Power Plant License Renewal

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Extension of request for comments period.

SUMMARY: On November 6, 1986 (51 FR 40334), the U.S. Nuclear Regulatory Commission published a notice requesting comments on development of policy for nuclear power plant license renewal. The notice established a comment closing date of January 5, 1987.

In response to numerous requests from the public, the NRC is extending the comment period for 30 days from the original comment closing date.

DATES: The comment period has been extended to February 2, 1987.

Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except to comments received on or before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received by the Commission may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Jerry E. Jackson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–8544.

Dated at Washington, DC this 23d day of December 1986.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 86–29379 Filed 12–30–86; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–CE–52–AD]

Airworthiness Directives; Champion Aircraft Company, Inc., Models 7 and 8 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Reopening of NPRM comment period.

SUMMARY: This action reopens the comment period of the subject NPRM which provides for inspection of the front and rear wing spars on Champion Models 7 and 8 airplanes for compression failures to preclude inflight structural failure of the wing.

DATES: Reopen comment period of Docket No. 86–CE–52–AD to April 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Efrain Esparza, Aerospace Engineer, Airplane Certification Branch, ASW–150, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; Telephone (817) 624–5156.

SUPPLEMENTARY INFORMATION: The FAA issued an NPRM on October 24, 1986, applicable to Champion Aircraft Company, Inc., Models 7 and 8 airplanes, which was published in the **Federal Register** on November 13, 1986 (51 FR 41113). The comment period closed December 10, 1986. This Notice would require inspection of the front and rear wing spars for compression failures to preclude inflight structural failure of the wing.

Subsequent to the closing date for comments on this NPRM, a request was received from the Experimental Aircraft Association to extend the comment period to allow additional time to comment on the proposed rule. The FAA believes it is in the public interest to reopen and extend the comment period in order to allow any comments deemed necessary.

This document involves only reopens a comment period for a proposed regulation. 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 regulatory evaluation has not been prepared for this action as the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR by revising the effective date of the comment period for Docket No. 86–CE–52–AD 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 date for comment:

DATE: Comments must be received on or before April 5, 1987.

Issued in Kansas City, Missouri on December 18, 1986.

Jerold M. Chavkin,

Acting Director, Central Region

[FR Doc. 86-29367 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-CE-68-AD]

Airworthiness Directives; Gulfstream Aerospace Models 112, 112B, 112TC, 112TCA, 114, and 114A 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 the Gulfstream Aerospace Models 112 and 114 series airplanes, which would require inspections and repair as necessary of the forward wing spar. Reports have been received of cracks forming in the forward wing spar in the area of the main landing gear side brace fitting attachment. The proposed action will detect these cracks and provide repair instructions which will preclude failure of the spar and subsequent loss of the airplane.

DATE: Comments must be received on or before March 2, 1987.

ADDRESSES: Gulfstream Aerospace Service Bulletin Nos. SB-112-71B, Revision 1, and SB-114-22B, Revision 1, both dated September 19, 1986, applicable to this AD may be obtained from Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123; 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-68-AD, Room 1158, 601 East 12th St., 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: Tom Dragset, Airplane Certification Branch, ASW-150, FAA, Southwest Region, P.O. Box 1689, Forth Worth, Texas 76101; Telephone (817) 624-5155.

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 will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental, energy, and alternate methods of compliance 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 the proposed AD 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: Rules Docket No. 86-CE-68-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There have been reports of cracks in the forward wing spar in the area of the main landing gear side brace fitting attachment on Gulfstream Aerospace Model 112 and 114 series airplanes. There have been 224 aircraft inspected to date and cracks in the left-hand or right-hand forward wing spar or both have been detected in 110 of these aircraft. Should these cracks go undetected, the forward wing spar may fail and result in the loss of the airplane. Since this condition is likely to exist or develop on other Gulfstream Aerospace Model 112, 112B, 112TC, 112TCA, 114 or 114A airplanes of the same type design, FAA is proposing an AD based upon the information currently available which would require inspections and repair as necessary of the forward wing spar in accordance with Gulfstream Aerospace Service Bulletin Nos. SB-112-71B, Revision 1, or SB-114-22B, Revision 1, as applicable.

Informal communications with some operators have indicated there may be concern that the above Service Bulletins are not a final solution to this service problem. The FAA actively solicits comments and any information regarding alternate methods of complying with the intent of this proposed AD. Comments submitted regarding an alternative method or the adequacy of the proposed corrective action herein should be sufficiently detailed and substantiated to permit a complete and proper evaluation of their merit.

The FAA has determined there are approximately 1,064 airplanes affected by this proposal. The inspection cost imposed by the proposed AD would be $175 per airplane for a total estimated cost of $186,200 to the private sector. If cracks are found in either or both wings, repairs must be made at the owner's expense. This is not considered a regulatory cost to the AD since owners/operators are required by other regulations to maintain their aircraft to specific safety and airworthiness standards. The FAA views the economic impact of this proposed AD to be negligible and concludes that a full regulatory evaluation is not warranted.

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 FAA proposes to amend Section 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.

2. By adding the following new AD:

Gulfstream Aerospace (Rockwell): Applies to Model 112 and 112B (S/N's 1 through 544 and 13000); 112TC and 112TCA (S/N's 13001 through 13309); and 114 and 114A (S/N's 14000 through 14540) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD unless already accomplished.

To prevent failure of the forward wing spar in the area of the main landing gear side brace fitting attachment, accomplish the following for both right and left wings:

(a) For all applicable airplane left and right wings that thave not been modified or repaired in accordance with any part of Gulfstream Service Bulletins (S/B) SB–112–71 dated November 8, 1985, SB–112–71A dated April 9, 1986, SB–112–71B, Revision 1, dated September 19, 1986, SB–114–22 dated November 8, 1985, SB–114–22A dated April 9, 1986, or SB–114–22B, Revision 1, dated September 19, 1986, accomplish the following:

(1) Within the next 100 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS or at each annual inspection as applicable, visually inspect the left and right wing spars in the area of the main landing gear side brace fitting in accordance with Part I of Gulfstream S/B SB–112–71B, Revision 1, or Part I of S/B SB–114–22B, Revision 1, both dated September 19, 1986, as applicable.

(2) If cracks are found as a result of the inspection per paragraph (a)(1) above, and if these cracks do not extend past the cutout dimensions specified in Figure 4 of the referenced S/Bs, prior to further flight, repair the wing spar in accordance with Part II of Gulfstream S/B SB–112–71B, Revision 1, or Part II of S/B SB–114–22B, Revision 1, both dated September 19, 1986, as applicable.

(3) If cracks are found as a result of the inspection per paragraph (a)(1) above, and if these cracks do extend past the cutout dimensions specified in Figure 4 of the referenced S/Bs, prior to further flight, contact Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123, for a special FAA–approved repair disposition.

(4) The repetitive inspections specified in paragraph (a)(1) of this AD, for each wing, may be discontinued if the repairs specified in paragraphs (a)(2) or (a)(3) above have been accomplished on that wing spar.

(b) For all applicable airplane left and right wings that have been modified or repaired in accordance with Part IV of Gulfstream S/B SB–112–71B, Revision 1, dated September 19, 1986, or Part IV of SBS–114–22B, Revision, 1, dated September 19, 1986, accomplish the following:

(1) Within the next 100 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS or at each annual inspection as applicable, visually inspect the left and right wing spars in the area of the main landing gear side brace fitting in accordance with Part I of Gulfstream S/B SB–112–71B, Revision 1, or Part I of S/B SB–114–22B, Revision 1, both dated September 19, 1986, as applicable.

(2) If cracks are found as a result of the inspection per paragraph (b)(1) above, and if these cracks do not extend past the cutout dimensions specified in Figure 4 of the referenced S/Bs, prior to further flight, repair the wing spar in accordance with Part V of Gulfstream S/B SB–112–71B, Revision 1, or Part V of S/B SB–114–22B, Revision 1, both dated September 19, 1986, as applicable.

(3) If cracks are found as a result of the inspection per paragraph (b)(1) above, and if these cracks do extend past the cutout dimensions specified in Figure 4 of the referenced S/Bs, prior to further flight, contact Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123, for a special FAA-approved repair disposition.

(4) The repetitive inspections specified in paragraph (b)(1) of this AD, for each wing, may be discontinued if the repairs specified in paragraphs (b)(2) or (b)(3) above have been accomplished on that wing spar.

(c) For all applicable airplane left and right wings that have been modified or repaired in accordance with Part II of Gulfstream S/B SB–112–71 dated November 8, 1985, or Part II of SB–114–22 dated November 8, 1985, within the next 100 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, modify the applicable wing spar(s) in accordance with Part III of Gulfstream S/B SB–112–71B, Revision 1, or Part III of S/B SB–114–22B, Revision 1, both dated September 19, 1986, as applicable.

(d) The airplane may be flown in accordance with 21.197 to a location where the repair can be performed, provided the following conditions are met:

(1) Existing cracks have not propagated together (in the event there are cracks above each bracket attachment bolts) and the cracks have not propagated beyond the limits of the service bulletin (see Figure 4 of Gulfstream Aerospace S/B Nos. SB–112–71B, Revision 1, or SB–114–22B, Revision 1, both dated September 19, 1986, as applicable).

(2) The landing gear side brace and bracket are firmly attached such that proper extension and retraction of the gear will occur.

(3) Pilot only on board.

(4) Day VFR only, avoiding, all rough weather possible, and with no intentional abrupt maneuvers.

(e) An equivalent method of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, ASW–150, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106, Telephone (817) 624–5150.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Gulfstream Aerospace Corporation, Wiley Post Airport, P.O. Box 22500, Oklahoma City, Oklahoma 73123; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 15, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86–29221 Filled 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86–CE–70–AD]

Airworthiness Directives; Piper Aircraft Corporation (Ted Smith Aerostar) Models PA–60–600, PA–60–601, PA–60–601P, PA–60–602P and PA–60–700P 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 Piper Aircraft Corporation PA–60 Series airplanes which would require a one-time removal and inspection of the exhaust system for each engine, and replacement of failed parts. Reinstallation of the exhaust system requires special attention to the alignment, installation sequences and use of a high temperature lubricant. This action is prompted by occurrences of cracked or failed components which have caused substantial damage and an accident. The inspection and reinstallation will remove damaged parts and will result in a properly aligned system installation.

DATE: Comments must be received on or before January 30, 1987.

ADDRESSES: Piper Service Bulletin No. 818, dated February 25, 1986, applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; 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–70–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location beween 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Goodall, FAA, ACE–140A, Atlanta Aircraft Certification Office, Suite 201, 1669 Phoenix Parkway, Atlanta, Georgia 30349; Telephone (404) 763–7435.

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: Rules Docket No. 86–CE– 70–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There have been six (6) reports of Piper PA–60 Series airplane exhaust system failures which have resulted in substantial airplane damage and at least one failure resulted in an accident. The failure often is a broken flange at the turbocharger allowing the tailpipe to fall away; consequently, hot exhaust gas impinges on controls and structures. In certain reports the engine controls seized as a result of the hot exhaust gases. Others report substantial airplane wing structure damages. The FAA evaluation indicates that the exhaust system should be installed in a specified sequence using a high temperature lubricant to prevent misalignment and the introduction of high stress into the system. Piper Aircraft Corporation has issued Service Bulletin 818 dated February 25, 1986, to describe removal, inspection, and reinstallation of the exhaust system on these airplanes. Since the condition described is likely to exist or develop in other Piper Model PA–60 Series airplanes of the same design, the proposed AD would require a one-time removal and inspection for cracks or deformed parts, the replacement of failed parts and proper reinstallation of the exhaust system on Piper Aircraft Corporation Model PA–60 Series airplanes.

The FAA has determined there are approximately 890 airplanes affected by the proposed AD. The cost of inspecting these airplanes as required by the proposed AD is estimated to be $1,000 per airplane. The total cost is estimated to be $890,000 to the private sector.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be 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 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 prepared for this action 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

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Section 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.

2. By adding the following new AD:

Piper Aircraft Corporation (Ted Smith Aerostar): Applies to the following models and serial numbers of airplanes certificated in any category:

Model	Serial Nos. affected
PA–60–600 (Aerostar 600).	60–0001–003 through 60–0933–8161262.
PA–60–601 (Aerostar 601).	61–0001–0004 through 61–0880–8162157.
PA–60–601P (Aerostar 601P).	61P–0157–001 through 61P–0860–8163455.
PA–600–602P (Aerostar 602P).	62P–0750–8165001 and 62P–0861–8165002 through 62P–0932–8165055 and 60–8265001 through 60–8365021.
PA–60–700P (Aerostar 700P).	60–8423001 through 60–8423025.

Compliance: Required within the next 50 hours time in service after the effective date of this AD, unless already accomplished.

To prevent failed exhaust system components, accomplish the following on each engine:

(a) For affected Model PA–60–600 airplanes, remove the exhaust system components by accomplishing the following steps:

(1) Remove engine cowling.

(2) Remove exhaust stack support clamp from stack.

(3) Disconnect all stack flanges and remove complete exhaust stack assembly from each side.

(b) For affected Model PA–60–601, –601P, –602P, and –700P airplanes, remove the exhaust system components by accomplishing the following steps:

(1) Remove engine cowling.

(2) Loosen clamp on turbocharger exhaust port and slide rear section of exhaust stack aft and out.

(3) Disconnect waste gate control linkage and remove clamp attaching turbocharger waste gate.

(4) Slide waste gate section aft and out.

(5) Loosen balance tube end and center clamps, and compress balance tube.

(6) Disconnect all stack flanges and remove forward section of exhaust stack from each side.

(c) For all affected airplanes, visually inspect all exhaust system components by accomplishing the following:

(1) Clean and inspect all welds for cracks and pin holes, using a dye penetrant procedure.

(2) Inspect clamps, clamp bolts, and supports for condition and security of attachment.

(3) Inspect slip joints for signs of leaks and/or binding.

(4) Inspect stack flange mating surfaces for cracks or burns.

(5) Inspect turbocharger mounting flange on waste gate for cracks or burns.

(6) Rotate waste gate control lever to insure proper operation.

(7) Inspect gaskets for signs of leaks. Discard gaskets at each disassembly.

(d) For all affected airplanes, inspect using dye penetrant procedures, the turbocharger attachment flange on aft section exhaust pipe for cracks, especially in the welds.

(e) Prior to further flight, replace all unserviceable parts including all used gaskets.

(f) For affected Model PA–60–600 airplanes, install the exhaust system by accomplishing the following steps:

(1) Prior to reassembly, clean all slip joints and apply Fel-Pro antiseize lubricant (type C5–A), Piper Part Number 912–012 to exhaust pipes at slip joints.

(2) Slide forward and aft sections together. Replace parts that do not assemble freely without binding.

(3) Place new flange gaskets into position and place exhaust system onto cylinder studs at exhaust ports. Install flange nuts loosely.

(4) Partially tighten all nuts. Never fully tighten any part of the exhaust system before proceeding to another part on the same side of the engine.

(5) Inspect slip joint after stacks are installed to assure proper alignment and freedom from binding when flange nuts are tightened.

(6) Tighten each part on one side of the engine uniformly until a torque of 205–215 inch pounds has been applied.

(7) Install exhaust stack support clamp onto stack, and adjust support rod end so that clamp can be moved along stack by hand. Distance between stack and tunnel surface should be .50 inch minimum to 1.60 inch

maximum on left stack; .75 inch minimum to 1.60 inch maximum on right stack. Replace parts which do not fall within this range.

(8) Start and run engine in accordance with the appropriate flight manual, shut down engine and check for leaks and correct as required.

(9) Install cowling.

(g) For affected Model PA-60-601, -601P, 602P, and -700P airplanes, install the exhaust system by accomplishing the following:

(1) Prior to reassembly, clean all slip joints and apply Fel-Pro antiseize lubricant (type C5-A), Piper Part Number 912-012, to exhaust pipes and waste gates at all slip joints.

(2) Slide first and second sections of exhaust stack together. Replace parts that do not assemble freely without binding.

(3) Position stack flanges and new gaskets onto exhaust ports. Install flange nuts loosely.

(4) Install V-clamp onto turbocharger waste gate flange with opening aft.

(5) Position new gasket on waste gate turbocharger exhaust port. Spread V-clamp on turbocharger waste gate flange and install waste gate onto exhaust pipe and turbocharger. Install clamp nut loosely.

(6) Install V-clamp and new gasket on turbocharger exhaust port. Spread V-clamp and install aft section of exhaust stack onto turbocharger and waste gate. Install clamp nut loosely.

(7) Install balance tube, insuring that ends extend into clamps beyond slits in tube ends, and install end clamp bolts loosely.

(8) Starting at the front of the engine and working aft, partially tighten all nuts. Never fully tighten any part of the exhaust system before proceeding to another part on the same side of the engine.

(9) Reinspect all joints after parts are installed to assure proper alignment and freedom from binding when nuts are fully tightened.

(10) Tighten each part on one side of the engine uniformly starting at front of engine and working aft. Torque flange nuts to 205-215 inch pounds and V-clamp nuts to 45-50 inch pounds.

(11) After completing both sides of engine, tighten balance tube clamps.

(12) Reconnect and adjust waste gate control linkage per Aircraft Maintenance Manual.

(13) Start and warm engine in accordance with appropriate flight manual, shut down engine, check for evidence of leaks and correct as necessary. Retorque V-clamps to 45-50 inch pounds.

(14) Install cowling.

(h) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(i) An equivalent means of compliance with this AD may be used if approved by Manager, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note.—Piper Aircraft Corporation Service Bulletin No. 818, dated February 25, 1986, pertains to the subject addressed by this AD.

Issued in Kansas City, Missouri, on December 16, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-29229 Filed 12-30-86; 8:45am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AGL-34]

Proposed Establishment of Transition Area—Mobridge, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Mobridge, South Dakota, transition area to accommodate a new NDB Runway 12 Standard Instrument Approach Procedure (SIAP) to Mobridge Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATE: Comments must be received on or before January 28, 1987.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 86-AGL-34, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The development of a new NDB Runway 12 SIAP requires that the FAA designate airspace to ensure that the procedure will be contained within controlled airspace.

The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace. Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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-AGL-34." 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, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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, S.W., 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 § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area airspace near Mobridge, South Dakota.

Section 71.181 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, Transition 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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Mobridge, South Dakota [New]

The airspace extending upward from 700 feet above the surface within a 5 mile radius of Mobridge Municipal Airport (Lat. 45°33′00″ N., Long 100°24′00″ W.); and within 3 miles either side of the 297° bearing from the Mobridgfe NDB extending from the 5 mile radius to 8 miles northwest of the Mobridge NDB; and, that airspace extending upward from 1200 feet above the surface within 9.5 miles southwest of, and 4.5 miles northeast of the 297° bearing from the Mobridge NDB, extending from the Mobridge NDB to 18.5 miles northwest excluding the portions within V71.

Issued in Des Plaines, Illinois, on December 15, 1985.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86–29219 Filed 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–AEA–6]

Proposed Establishment of Transition Area, Edgewood, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed ruelmaking.

SUMMARY: This notice proposes to establish a transition area at Edgewood, MD. Two new RNAV Runway 1 and 19 instrument approach procedures have been developed to the Weide Army Air Field, Edgewood, MD. The transition area is to provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR).

DATE: Comments must be received on or before February 6, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Glenn A. Bales, Manager, Airspace and Planning Branch, AEA–530, Federal Aviation Administration, Docket 86–AEA–6, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

The official dockets may be examined in the Office of Regional Counsel, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace and Planning Branch, AEA–530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917–1228.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace and Planning Branch, AEA–530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917–1228.

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–AEA–6." 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 the 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 NPRMs

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of Regional Counsel, AEA–7, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs 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 § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Edgewood, MD. Two new RNAV Runway 1 and 19 instrument approach procedures have been developed to the Weide Army Air Field, Edgewood, MD. The transition area is to provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 2, 1986.

The FAA has determined that this amendment only involves an

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed 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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Edgewood, MD [New]

That airspace extending upward from 700 feet above the surface within an 5-mile radius of the center (lat. 39°23'00" N, Long. 76°18'00" W) of Weide Army Airfield, Maryland, and within 4.5 miles either side of a line drawn between the center (Lat. 39°23'00" N, Long. 76°18'00" W) of Weide Army Airfield, MD, and a point (Lat. 39°09'05" N Long. 76°13'43.9" W), out to 12 miles from the airport center and within 4.0 miles either side of a line drawn between the center (lat. 39°23'00" N, Long. 76°18'00" W) of Weide Army Airfield, MD, and a point (Lat. 39°35'15.4" N Long. 76°18'02" W), out to 12 miles from the airport center; excluding the airspace in R–4001 A & B and the Martin and Phillips Airport Transition Areas.

Issued in Jamaica, New York, on December 18, 1986.

Edmund Spring,

Manager, Air Traffic Division.

[FR Doc. 86–29370 Filed 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–AEA–4]

Proposed Alteration of Transition Area, Ocean City, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: This notice withdraws the Notice of Proposed Rulemaking (NPRM), Airspace Docket No. 85–AEA–4, which was published in the **Federal Register** on November 8, 1985. That NPRM proposed to alter the transition area at Ocean City, MD. This action was based on a proposed LDA Runway 14 instrument approach procedure to the Ocean City Municipal, MD, Airport. The transition area was to provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR).

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Glenn A. Gales, manager, Airspace Planning Branch, AEA–530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917–1228.

The Proposed Rule

On November 8, 1985, a Notice of Proposed Rulemaking was published in the **Federal Register** to alter the transition area at Ocean City, MD. The proposed transition area was to provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR). (50 FR 46448).

Summary of Comments

Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Conclusions

The FAA has received notice that the proposed LDA Runway 14 instrument approach procedure has been canceled. Concurrently, a new centerline runway 14 instrument approach procedure has been submitted for approval. If additional airspace for air traffic control is required for this approach procedure, it will be the subject of a separate Notice of Proposed Rulemaking (NPRM) at a later date.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Withdrawal

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, The Notice of Proposed Rulemaking, Airspace Docket No. 85–AEA–4 as published in the **Federal Register** on November 8, 1985, (50 FR 46448), is hereby withdrawn.

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.

Issued in Jamaica, New York, on December 18, 1986.

Edmund Spring,

Manager, Air Traffic Division.

[FR Doc. 86–29371 Filed 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 86–ASO–28]

Proposed Designation of Transition Area, Walnut Cove, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate the Walnut Cove, North Carolina, transition area to accommodate Instrument Flight Rules (IFR) operations at Meadow Brook Field Airport. This action will lower the base of controlled airspace from 1200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure based on the existing Greensboro, North Carolina, Very High Frequency Omnidirectional Radio Range/TACAN (VORTAC), is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

DATE: Comments must be received on or before February 15, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO–530, Manager, Airspace and Procedures Branch, Docket No. 86–ASO–28, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Ronald T. Niklasson, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763–7646.

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-ASO-28." 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 Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, 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, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. 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 § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will designate the Walnut Cove, North Carolina, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to the Meadow Brook Field Airport. If the designation of the proposed transition area is found acceptable, the operating status of the airport will be changed from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA 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 taffic procedures and air naviation, 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, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposed 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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Walnut Cove, NC [New]

That airspace extending upward from 700 feet above the surface within a 7.5 mile radius of Meadow Brook Field Airport (lat. 36°18'05" N., long. 80°08'55" W.); excluding the portion that coincides with the Greensboro, NC, transition area.

Issued in East Point, Georgia, on December 16, 1986.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 86-29373 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AEA-7]

Proposed Establishment of Transition Area, Petersburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a transition area at Petersburg, WV. A new VOR/DME-A instrument approach procedures has been developed to the Grant County, Petersburg, WV Airport. The transition area is to provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR).

DATES: Comments must be received on or before February 6, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Glenn A. Bales, Manager, Airspace and Planning Branch, AEA-530, Federal Aviation Administration, Docket 86-AEA-7, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

The official dockets may be examined in the Office of Regional Counsel, Federal Aviation Administration Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace and Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

FOR FURTHER INFORMATION CONTACT: Glenn A. Bales, Airspace and Planning Branch, AEA-530, Air Traffic Division, Federal Aviation Administration Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

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–AEA–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 the 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 NPRMs

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting the request to the Office of Regional Counsel, AEA–7, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs 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 § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Petersburg, WV. A new VOR/DME–A instrument approach procedure has been developed to the Grant County, Petersburg, WV Airport. The transition area is to provide protected airspace for aircraft departing/arriving under Instrument Flight Rules (IFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 2, 1986.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

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.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Petersburg, WV [New]

That airspace extending upward from 700 feet above the surface within an 5-mile radius of the center (Lat. 38°59'35" N, Long. 78°08'34" W) of Grant County Airport, Petersburg, WV and within 4 miles each side of the 214 radial of the Kessel, WV VORTAC (Lat. 39°13'31" N, Long. 78°59'23" W) extending from the VORTAC to 15.6 NM of the VORTAC.

Issued in Jamaica, New York, on December 18, 1986.

Edmond Spring,

Manager, Air Traffic Division.

[FR Doc. 86–29372 Filed 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 86–AWP–27]

Proposed Alteration of Restricted Areas and Associated Military Operation Areas, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of Restricted Areas R–4803S, R–4804, R–4810, R–4812, R–4816N and R–4816S located in the state of Nevada. After reviewing the subject restricted areas, the FAA and the U.S. Navy have determined that the alteration of these areas will enable the using agency, U.S. Navy, to release previously restricted airspace for public use. In conjunction with these actions, several ancillary nonrulemaking actions would be taken to remove Military Operations Area (MOA) designated from other airspace.

DATE: Comments must be received on or before February 18, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 86–AWP–27, 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: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9245.

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–27." 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 Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. 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 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter the descriptions of Restricted Areas R-4803S, R-4804, R-4810, R-4812, R-4816N and R-4816S located in the state of Nevada. After reviewing the subject restricted areas, the FAA and the U.S. Navy have determined that the alteration of these areas will enable the using agency, U.S. Navy, to release previously restricted airspace and return it to public use. The designated altitudes of R-4803S would be editorially changed to reflect the correct usage of the affected airspace. The designated altitudes and time of designation of R-4804 would be changed to provide additional access to that airspace by the flying public. The designated altitudes of R-4810 would be editorially changed to reflect the correct usage of the affected airspace. The designated altitudes and time of designation of R-4812 would be changed to provide additional access to the airspace by the public. The time of designation of R-4816N would be amended to reflect more accurately when the restricted area is being used for military operations. The boundaries and time of designation of R-4816S would also be amended to provide additional airspace for public use.

It should be noted that alterations to Restricted Areas R-4804, R-4812, and R-4816S are being proposed to permit the establishment of VFR corridors through the area for the use of the flying public in order to provide greater access through the affected airspace. Section 73.48 of Part 73 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.

Proposed Ancillary Nonrulemaking Actions

Several nonrulemaking airspace actions involving Military Operation Areas (MOA) are under consideration in conjunction with the proposed amendments to restricted airspace discussed above. MOA's are not regulatory airspace and, therefore, do not require public notice and comment before they are adopted and indicated on aeronautical charts. However, changes to MOA's associated with the proposed restricted area amendments are included in this preamble to provide additional information on the proposed amendments.

This proposal is intended to permit optimum use of the airspace by all users. A MOA is a nonregulatory designation of airspace of defined dimensions established outside positive control area to separate/segregate certain nonhazardous military activities from IFR traffic and to identify for VFR traffic where these activities are conducted.

In consideration of both civilian and military flying activities, the FAA and U.S. Navy have proposed amendments to the Austin 1, Austin 2, Ranch, Gabbs North, and the Gabbs South MOA's. In addition, the Gabbs Central MOA would be established as part of this action. VFR corridors would be established along these areas to provide civil air traffic access through the Fallon NAS restricted areas without entering MOA airspace. These corridors are expected to absorb and distribute a substantial amount of VFR traffic through the Fallon area while posing minimal impact on the military special use airspace.

The following changes to MOA's would be adopted if the proposed amendments to the Fallon restricted areas are adopted:

Austin 1 MOA, NV [Amended]

By removing the words "(3) That airspace 2 NM either side of Highway 50 below 2,000 feet AGL." and by substituting the words "That airspace 2 NM either side of State Route 722 to the town of Austin, then 2 NM either side of U.S. Highway 50 to the eastern boundary of the Austin 1 MOA between 2,000 feet AGL and 10,500 feet MSL."

Austin 2 MOA, NV [Amended]

By removing the words "that airspace 2 NM either side of Highway 50 below 2,000 feet AGL." and by substituting the words "that airspace 2 NM either side of U.S. Highway 50 between 2,000 feet AGL and 10,500 feet MSL."

Ranch MOA, NV [Amended]

By removing the present times of use and by substituting the following:

Times of use. 0715-2330 daily; other times by NOTAM.

Gabbs North MOA, NV [Amended]

By removing the present boundaries and times of use and by substituting the following:

Boundaries. Beginning at lat. 39°06'05" N., long. 118°33'34" W.; to lat. 39°10'00" N., long. 117°23'00" W.; to lat. 39°55'00" N., long. 117°26'00" W.; to lat. 40°06'00" N., long. 117°48'00" W.; to lat. 40°06'00" N., long. 118°15'00" W.; to lat. 39°57'00" N., long. 118°38'00" W.; to lat. 39°45'53" N., long. 118°37'52" W.; to lat. 39°25'00" N., long. 118°25'30" W.; to lat. 39°17'00" N., long. 118°21'00" W.; to the point of beginning; excluding R-4802, R-4804, R-4810, R-4812, R-4813, R-4816N, R-4816S, and those portions of the Fallon and Stillwater National Wildlife Refuge areas below 3,000 feet AGL. Also, excluding that airspace from the western boundary of Gabbs North MOA to lat. 39°17'20" N., long. 118°07'30" W.; within 1 NM north of U.S. Highway 50 between 2,000 feet AGL and 8,500 feet MSL; to lat. 39°18'00" N., long. 117°55'00" W.; within 1 NM north of U.S. Highway 50 and 2 NM south of U.S. Highway 50 and State Road 722 between 2,000 feet AGL and 10,500 feet MSL; to the eastern boundary of the Gabbs North MOA 2 NM either side of State Road 722 between 2,000 feet AGL and 10,500 feet MSL.

Times of use. 0715-2330 daily; other times by NOTAM.

Gabbs South MOA, NV [Amended]

By removing the present boundaries and times of use and substituting the following:

Boundaries. Beginning at lat. 38°43'00" N., long. 118°11'30" W.; to lat. 38°40'00" N., long. 118°05'10" W.; to lat. 38°40'00" N., long. 118°00'00" W.; to lat. 38°56'00" N., long. 117°23'00" W.; to lat. 39°10'00" N., long. 117°23'00" W.; to lat. 38°43'00" N., long. 118°02'00" W.; to the point of beginning; excluding that airspace encompassed by a 3 NM radius centered on the town of Gabbs.

NV, located at lat. 38°52'12" N., long. 117°55'30" W.; below 2,000 feet AGL.

PART 73—[AMENDED]

Times of use. 0715–2330 daily; other times by NOTAM.

Gabbs central MOA, NV [New]

Boundaries. Beginning at lat. 39°06'05" N., long. 118°33'34" W.; to lat. 38°58'00" N., long. 118°42'50" W.; to lat. 38°43'00" N., long. 118°11'30" W.; to lat. 38°43'00" N., long. 118°02'00" W.; to lat. 39°10'00" N., long. 117°23'00" W.; to the point of beginning; excluding that airspace encompassed by a 3 NM radius centered on the town of Gabbs, NV, located at lat. 38°52'12" N., long. 117°55'30" W.; below 2,000 feet AGL.

Altitudes. 100 feet AGL up to but not including FL 180.

Times of use. 0715–2330 daily; other times by NOTAM.

Controlling agency. FAA, Oakland ARTCC.

Using agency. U.S. Navy, Fallon NAS, NV.

MOA designations are not published in the **Federal Register** but are included in FAA Handbook 7400.6B.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

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

Authority. 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.48 [Amended]

2. Section 73.48 is amended as follows:

R–4803S Fallon, NV [Amended]

By removing the present designated altitudes and by substituting the following:

Designated altitudes. Surface to FL 180.

R–4804 Twin Peaks, NV [Amended]

By removing the present designated altitudes and times of designation and by substituting the following:

Designated altitudes. Surface to but not including FL 180 excluding that portion from 2,000 feet AGL up to 8,500 feet MSL which lies north of and 1 NM from U.S. Highway 50, between the intersection of U.S. Highway 50 with long. 118°25'30" W., and long. 118°07'30" W.

Time of designation. 0715–2330 local time, daily.

R–4810 Desert Mountains, NV [Amended]

By removing the present designated altitudes and by substituting the following:

Designated altitudes. Surface to and including 17,000 feet MSL.

R–4812 Sand Springs, NV [Amended]

By removing the present designated altitudes and time of designation and by substituting the following:

Designated altitudes. Surface to but not including FL 180 excluding that portion from 2,000 feet AGL up to 8,500 feet MSL which lies north of and 1 NM from U.S. Highway 50, between the intersection of U.S. Highway 50 with long. 118°25'30" W., and long. 118°07'30" W.

Time of designation. 0715–2330 local time, daily.

R–4816N Dixie Valley, NV [Amended]

By removing the present designated altitudes and by substituting the following:

Time of designation. 0715–2330 local time, daily.

R–4816N Dixie Valley, NV [Amended]

By removing the present boudaries and time of designation and by substituting the following:

Boundaries. Beginning at lat. 39°17'00" N., long. 118°21'00" W.; to lat. 39°30'00" N., long. 118°15'30" W.; to lat. 39°34'00" N., long. 118°12'30" W.; to lat. 39°34'00" N., long. 118°39'30" W.; thence via a line 1 NM north of U.S. Highway 50; to the point of beginning.

Time of designation. 0715–2330 local time, daily.

Issued in Washington, DC, on December 23, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–29369 Filed 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 86–AWP–28]

Proposed Alteration of Restricted Area R–4813 Carson Sink, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Restricted Area R–4813 located near Carson Sink, NV. After reviewing their overall training and operational requirements, the Department of the Navy has requested changes in Restricted Area R–4813 to accommodate planned flight activities. This action will provide the Navy additional airspace to conduct its training and operational requirements.

DATE: Comments must be received on or before February 18, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 86–AWP–28, 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: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9245.

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–28." 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 Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. 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 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter the description of Restricted Area R-4813 located near Carson Sink, NV. The Department of Navy has requested changes in R-4813 to accommodate planned military flight activities, and this action will provide the additional airspace needed to fulfill Navy requirements. Additional related airspace actions are being proposed concurrently in Airspace Docket No. 86-AWP-27. These associated airspace actions will return previously restricted area airspace for public use. Section 73.48 of Part 73 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 73

Aviation safety, Restricted areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

PART 73—[AMENDED]

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

Authority. 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.48 [Amended]

2. Section 73.48 is amended as follows:

R-4813 Carson Sink, NV—[Amended]

By removing the present boundaries and substituting the following:

Boundaries. Begining at lat. 39°51'00" N., long. 118°38'00" W.; to lat. 39°55'01" N., long. 118°28'49" W.; thence clockwise via the arc of a 5-nautical-mile radius circle centered at lat. 39°55'08" N., long. 118°22'19" W.; to lat. 39°59'21" N., long. 118°18'49" W.; to lat. 40°01'00" N., long. 118°15'00" W.; to lat. 40°01'00" N., long. 118°01'00" W.; to lat. 39°58'00" N., long. 118°01'00" W.; to lat. 39°37'50" N., long. 118°16'58" W.; thence clockwise via the arc of a 15-nautical-mile radius circle centered at lat. 39°52'36" N., long. 118°20'27" W.; to lat. 39°45'53" N., long. 118°37'52" W.; to the point of beginning.

Issued in Washington, DC, on December 23, 1986.

Harold H. Downey,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-29368 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-15494; File No. S7-32-86]

Offers of Exchange Involving Open-end Investment Companies and Unit Investment Trusts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission is proposing a rule that would permit a mutual fund or its principal underwriter to make certain exchange offers to its own shareholders or to shareholders of another fund in the same family of funds. The Commission is also proposing a rule that would permit a unit investment trust or its sponsor to make certain exchange offers to unitholders of the same series or another series of the same trust or to unitholders of another unit investment trust having the same sponsor. By codifying standards for a variety of exchanges, these proposed rules are intended to reduce significantly, if not eliminate, the number of exemptive applications filed with the Commission regarding such transactions.

DATE: Comments must be received on or before March 31, 1987.

ADDRESS: Send comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments should refer to File No. S7-32-86. All comments will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Brian M. Kaplowitz, Chief, (202) 272-2048, or Brian P. Kindelan, Attorney, (202) 272-2048, Office of Regulatory Policy, Division of Investment Management , Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is proposing rules 11a-3 and 11c-1 under sections 11(a) and 11(c), respectively, of the Investment Company Act of 1940 [15 U.S.C. 80a-1, *et seq.*] ("Act"). Proposed rule 11a-3 would permit a registered open-end investment company ("mutual fund") or its principal underwriter to make certain exchange offers to its own shareholders or to shareholders of another fund in the same family of funds. Proposed rule 11c-1 would permit a unit investment trust ("UIT") or its sponsor to make certain exchange offers to unitholders of the same series or another series of the same trust or to unitholders of another UIT having the same sponsor. This release, after describing the legislative and administrative history of section 11, discusses the provisions of proposed rules 11a-3 and 11c-1.

The Commission will issue a notice to each open-end investment company that has received an order under section 11(a) that permits it to impose an administrative fee on exchange transactions. The notice will inform the company that the Commission proposes to issue an order amending its exemptive order to conform it to the provisions of proposed rule 11a-3 when adopted.

Background

Section 11 was intended to prevent "switching", the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company "solely for the purpose of exacting additional selling charges".[1] Finding that

[1] H. Rep. 2639, 76th Cong., 3d Sess., 8 (1940).

Continued

practice to be widespread in the 1930's[2] Congress provided in section 11(a) that the terms of an offer involving the exchange of mutual fund shares on any basis other than the relative net asset values of the securities to be exchanged shold be approved in advance by the Commission or made pursuant to rules adopted by the Commission.[3]

Investors in "fixed trusts", now known as unit investment trusts, were found to be particularly vulnerable to switching operations. In order to earn another sales commission, a UIT sponsor would often pressure unitholders into exchanging their units for those of another of the sponsor's trusts.[4] Therefore, section 11(c) provides that any exchange offer involving UIT securities must be approved in advance by the Commission or comply with whatever rules or regulations the Commission may have prescribed to govern such exchanges.[5]

There are presently two Commission rules under section 11.[6] Rule 11a–1 [17 CFR 270.11a–1] defines "exchange" to include, under certain circumstances, the issuance of a security upon the repurchase, termination, retirement or cancellation of an outstanding security.[7] Rule 11a–2 [17 CFR 270.11a–2] permits certain exchange offers by registered separate accounts.[8] The rule defines who may make and receive those exchange offers, and permits the offering account to charge an administrative fee and, under certain conditions, a sales load at the time of the exchange.

Under the authority granted in sections 11(a) and 6(c) [15 U.S.C. 80a–6(c)], the Commission has issued exemptive orders for exchange offers since 1947.[9] Applicants have represented that the purpose of an exchange offer is to permit a security holder to move securities from one investment company to another when market or tax considerations or changes in the holder's investment objectives warrant such a move.[10] Generally, the exemptive orders relating to the exchange of mutual fund shares allow a mutual fund or its principal underwriter to make an exchange offer to shareholders of the fund or another fund within the same complex. These exchanges are based on the relative net asset values of the securities to be exchanged subject to a fixed administrative fee and if the acquired securities are subject to a front-end sales load, a "sales load differential". The fixed administrative fee is typically $5.00 per exchange. The "sales load differential" is equal to the excess, if any, of the sales load that an investor would ordinarily have to pay when purchasing the acquired security over the sales load already paid on the security being exchanged. Many applicants permit a shareholder to exchange into a higher-load fund without paying the sales load differential, but only if the shareholder has owned the shares being exchanged for a minimum holding period (*e.g.*, five months).[11]

If the exchanged security was itself acquired through one or more exchanges, applicants have represented that the cumulative sales load paid will be used to calculate the sales load differential.[12] If the shareholder is exchanging less than all shares held of a particular fund, applicants have represented that in calculating the differential, the security upon which the highest load was paid will be considered exchanged first.[13] Where the securities being exchanged have been acquired through dividend reinvestment

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During a 1940 House hearing on the Act, David Schenker, Chief Counsel of the Commission's report, *Investment Trusts and Investment Companies* (1940) (hereinafter "Investment Trust Study"), described a switching operation as follows:

A promoter will organize one investment company. He will sell the securities of this company until they lose their sales appeal. He then organizes another investment company, and solicits the security holders of the first company to exchange their shares for the shares of the new company . . . saying, "Well, this new company I have set up is infinitely superior to the original company. I recognized my mistakes which I made in the old company. Why don't you switch from the first company into the new company". And in some instances the promoter then organizes a third investment company, and switches the investor from the second company into the third company. Every time he switches the investor, he takes a 9 or 10 percent sales load.

Hearings on H.R. 10065 Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 76th Cong., 3d Sess., 111 (1940).

[2] S. Rep. 1775, 76th Cong., 3d Sess., 7–8 (1940); Hearings on S. 3850 Before a Subcommittee of the Senate Committee on Banking and Currency, 76th Cong., 3d Sess., part 2, 951–57 (1940).

[3] Section 11(a) also states:

For the purposes of this section, (A) an offer by a principal underwriter means an offer communicated to holders of securities of a class or series but does not include an offer made by such principal underwriter to an individual investor in the course of a retail business conducted by such principal underwriter, and (B) the net asset value means the net asset value which is in effect for the purpose of determining the price at which the securities, or class or series of securities involved, are offered for sale to the public either (1) at the time of the receipt by the offeror of the acceptance of the offer or (2) at such later time as is specified in the offer.

Section 11(b) excepts from the provisions of section 11 any offer of exchange made under a plan of reorganization that has been approved by at least a majority of the outstanding shares of the class or series owned by the offerees. As originally enacted, section 11(b)(2) also excepted any offer of exchange made under a right of conversion, at the option of the holder, from one class or series into another class or series of securities issued by the same company upon such terms as were specified in the charter, certificate of incoropation, articles of association, by-laws or trust indenture. That provision was deleted in 1970 in order to subject these exchange offers to the same standards that govern other exchange offers involving mutual fund shares. *See* Investment Company Amendments Act of 1970, section 6, 84 Stat. 1417; H. Rep. 91–1382, 91st Cong., 2d Sess., 22 (1970); S. Rep. 91–184, 91st Cong., 1st Sess., 21 (1969).

[4] S. Rep. 1775, 76th Cong., 3d Sess., 7–8 (1940); Investment Trust Study, "Fixed and Semifixed Investment Trusts", 181–82, 209–30 and Appendix Q (1940).

[5] Section 11(c) states:

The provisions of subsection (a) shall be applicable, irrespective of the basis of exchange, (1) to any offer of exchange of any security of a registered open-end company for a security of a registered unit investment trust or registered face-amount certificate company; and (2) to any type of offer of exchange of the securities of registered unit investment trusts or registered face-amount certificate companies for the securities of any other investment company.

The Commission has decided to exclude face-amount certificate companies from the coverage of proposed rule 11c–1 because only a few face-amount certificate companies still exist and relief from section 11(c) can be handled through individual exemptive applications.

[6] After section 11(b) was amended to delete paragraph (b)(2), the Commission rescinded rule 11b–1 which had defined "class or series of securities issued by the same company" for purposes of that provision. *See* Investment Company Act Release No. 6440 (April 4, 1971) [36 FR 8729]; *see also supra* note 3.

[7] *See* Investment Company Act Release No. 5024 (July 12, 1967) [32 FR 10728].

[8] *See* Investment Company Act Release No. 13407 (July 28, 1983) [48 FR 36245].

[9] In the first exemptive order issued under section 11(a), the Commission stated that offers of exchange subject to that section "should be approved only when consummation of the exchanges will not have inequitable results to the security holder or investment companies concerned." *Hamilton Depositors Corporation*, 25 SEC 141, 148 (1947) (approval of exchange offer by mutual fund to UIT unitholders on the basis of the relative net asset values of the respective securities to be exchanged without the imposition of a sales charge or fee). *See also First Investors Shares Corporation*, 26 SEC 141 (1947) (approval of exchange offer by a UIT to unitholders of another UIT where exchanging unitholders would be charged a sales load of 1.5% of the offering price of the acquired units).

[10] *See, e.g.*, Principal World Fund, Inc., et al., Investment Company Act Release Nos. 15018 (March 27, 1986) [51 FR 11381] and 15071 (April 24, 1986).

[11] *See, e.g.*, IRI Stock Fund, Inc., et al., Investment Company Act Release Nos. 14914 (January 27, 1986) [51 FR 4054] and 14947 (February 20, 1986) (six month holding period); Heritage Capital Appreciation Trust, et al., Investment Company Act Release Nos. 14975 (March 7, 1986) [51 FR 8727] and 15032 (April 2, 1986) (30 day holding period).

[12] *See e.g.*, American Leaders Fund, Inc., Investment Company Act Release Nos. 13450 (August 22, 1983) and 13530 (September 26, 1983).

[13] *See, e.g.*, Industrial Series Trust, Investment Company Act Release Nos. 15043 (April 7, 1986) [51 FR 12755] and 15088 (May 6, 1986); IRI Stock Fund, Inc., et al., Investment Company Act Release Nos. 14911 (January 24, 1986) [51 FR 4055] and 14956 (February 25, 1986).

or capital gains distributions, applicants have represented that in calculating the differential, those securities will be considered to have been acquired with a sales load equal to that paid on the shares on which the dividend was paid or the distribution made.[14]

Where the acquired security is subject to a contingent deferred sales load (CDSL),[15] the orders provide that the CDSL will be calculated as if the acquired security were held from the date on which the exchanged security was acquired.[16] Some applicants have represented that if the exchanged security was subject to a front-end sales load and the acquired security is subject to a CDSL, the CDSL will not be charged for the acquired security.[17] Applicants have also represented that if both the exchanged security and the acquired security are subject to a CDSL, a CDSL will not be charged for the exchanged security.[18]

The exemptive orders relating to the exchange of UIT units permit a UIT or its sponsor to make an exchange offer to unitholders of the same series or another series of the offering trust or to unitholders of another UIT having the same sponsor. These orders allow exchanges at relative net asset value subject to a "reduced sales charge". The reduced sales charge is a fixed amount (typically $15 per $1000 unit exchanged or 1.5% of the offering price of the acquired unit) if the exchanging unitholder has held the exchanged units for more than a designated period of time (*e.g.*, five months). The reduced sales charge is the greater of the fixed charge or sales load differential if the exchanging unitholder has held the exchanged units for a shorter time.[19]

Given the frequency and routine nature of exemptive applications under section 11,[20] the Commission is proposing rules 11a–3 and 11c–1 to permit certain exchange offers to be made without advance Commission approval. As discussed below, these conditions are based on representations that have been included in the prior exemptive orders.

Discussion

A. Proposed Rule 11a–3

Proposed rule 11a–3 would exempt from section 11(a) certain exchange offers involving mutual fund shares.[21] The proposed rule would limit the recipient of an exchange offer to any person holding a security of the offering fund or of any other fund within the same "family of investment companies". "Family of investment companies" would be defined as "any two or more registered open-end investment companies that have the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services."[22] This approach is consistent with nearly all the exemptive orders, where the two mutual funds involved in an exchange transaction have either an investment adviser or principal underwriter in common.[23]

As in prior exemptive orders, the proposed rule would allow the exchanging security holder to be charged an administrative fee and a sales load under certain conditions.[24] Although prior exemptive orders specified the highest administrative fee that a fund could charge for an exchange transaction, the proposed rule would permit a "nominal" administrative fee and would not designate a fixed dollar limit on the amount that could be charged.[25] Any administrative fee or scheduled variation thereof[26] would have to be uniformly applied. The proposed rule would require that the prospectus of the offering company disclose any administrative fee imposed on an exchange transaction for its shares, as well as any fee imposed on its shareholders to acquire shares of any other funds in an exchange transaction. It would also require disclosure of any administrative fee in any sales literature or advertising that describes the exchange offer.[27] The Commission specifically requests comments on whether the provisions in proposed rule 11a–3 with respect to administrative fees are appropriate.

In addition to a nominal administrative fee, an exchanging security holder could be charged a sales load on the acquired security at the time of the exchange or when the acquired security is redeemed or exchanged. At either time, the sales load could not exceed the excess, if any, of the sales load that the exchanging security holder would ordinarily have to pay to purchase the acquired security over the sales load previously paid on the exchanged security (the "sales load differential"). The rule would define "exchanged security" to include the security actually exchanged and any security previously exchanged for that security or for any of its predecessors. Since the Rules of Fair Practice of the National Association of Securities Dealers set the maximum sales load that

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[14] *See, e.g.*, RNC Liquid Assets Fund, Inc., Investment Company Act Release Nos. 15112 (May 23, 1986) [51 FR 20395] and 15156 (June 16, 1986).

[15] A contingent deferred sales load (CDSL) is usually charged if a shareholder redeems shares prior to a specified period of time, such as within five years of the date of purchase.

[16] *See, e.g.*, Pru-Bache Adjustable Rate Preferred Stock Fund, Inc., et al., Investment Company Act Release Nos. 14883 (December 20, 1985) [50 FR 53412] and 14902 (January 16, 1986).

[17] *See, e.g.*, Putnam Tax-Free Income Trust, Investment Company Act Release Nos. 14659 (August 6, 1985) [50 FR 32924] and 14703 (September 4, 1985).

[18] *See supra* note 16.

[19] *See, e.g.*, Dean Witter Reynolds Inc., et al., Investment Company Act Release Nos. 13654 (December 2, 1983) and 13702 (January 6, 1984).

[20] Twenty-seven notices of applications involving exchanges were published in the **Federal Register** during the first six months of 1986.

[21] Registered separate accounts are excepted from the proposed rule because rule 11a–2 already exempts that type of offeror. *See supra* note 8 and accompanying text.

[22] The definition closely follows that found in Form N–SAR, General Instructions, Part G, which states in part: *"Family of Investment Companies:* The term 'family of investment companies,' except for insurance company separate accounts, means any two or more registered investment companies which share the same investment adviser or principal underwriter *and* hold themselves out to investors as related companies for purposes of investment and investor services." (emphasis in original)

See also rule 2a19–1 [17 CFR 270.2a19–1], which conditionally exempts certain investment company directors from being considered interested persons. Rule 2a19–1(b) states: "For purposes of this rule, 'complex' shall mean the registered investment company, its investment adviser (including all accounts over which the adviser has brokerage placement discretion), and its principal underwriter and all other investment companies having the same investment adviser or principal underwriter."

[23] *But See* American Leaders Fund, Inc., Investment Company Act Release Nos. 13450 (August 22, 1983) and 13530 (September 26, 1983), permitting exchanges between funds that have neither an investment adviser nor principal underwriter in common, but which are sold through the same brokers or dealers.

[24] The proposed rule would not allow any redemption fee to be imposed with respect to the exchanged security.

[25] It should be noted that in exemptive orders the Commission has permitted administrative fees most commonly of $5.00 although ranging to $25.00 in certain situations. *See, e.g.*, Strong Total Return Fund, Inc., et al., Investment Company Act Release Nos. 15357 (October 14, 1986) [51 FR 37810] and 15411 (November 13, 1986) ($5.00 administrative fee); Kidder, Peabody Equity Income Fund, Inc., et al., Investment Company Act Release Nos. 15163 (June 23, 1986) [51 FR 23871] and 15222 (July 24, 1986) ($25.00 administrative fee for any exchange after the first exchange by a shareholder in any calendar year).

[26] Applicants have represented that scheduled variations can depend on the number of exchanges in a specific time period. *See, e.g.*, Continental U.S. Government Plus Fund Trust, et al., Investment Company Act Release Nos. 14973 (March 13, 1986) [51 FR 8725] and 15029 (April 2, 1986).

[27] *Cf.* Form N–1A, item 7 (requires an investment company to disclose scheduled variations in, or elimination of, the sales load under an exchange privilege); Form N–1A, item 19 (requires an investment company to describe any exchange privilege).

a fund may charge on a single transaction at 8½% of the offering price,[28] an exchanging shareholder could not be charged a *cumulative* sales load of more than 8½% of the offering price of the security being acquired. As in the exemptive orders, these provisions are intended to give an exchanging shareholder credit for any sales loads previously paid.

Where either no sales load is imposed on the exchange or the sales load imposed is less than the sales load differential, the proposed rule would permit the offering company to require the exchanging shareholder to have held the exchanged security for a minimum period of time prescribed by the offering company and uniformly applied to all offerees of the class specified. The minimum holding period provision found in many exemptive applications, prevents an investor from buying shares of one fund and then immediately exchanging them—without paying a sales load—for those of a higher-load fund.[29] The Commission specifically requests comment on whether proposed rule 11a–3 should *require* a minimum holding period and, if so, whether it should specify the length of the minimum holding period.

The proposed rule would also codify the representations found in the exemptive applications that address exchanges of less than all of a shareholder's shares of a particular fund and exchanges of securities acquired through dividend reinvestment or capital gains distributions. Specifically, the rule would provide that in calculating the sales load differential, when the exchanging shareholder is exchanging less than all shares held of a particular fund, the security upon which the highest sales load was previously paid would be considered to be exchanged first. Any securities acquired through dividend reinvestment or capital gains distributions would be considered to have been sold with a sales load equal to the sales load previously paid on the shares on which the dividend was paid or distribution made.

Where the sales load on the acquired security is deferred, the proposed rule would require that the load be calculated as if the acquired security had been held from the date on which the exchanged security was acquired. This tacking of time formula, which was developed in the exemptive application process,[30] is intended to ensure that an exchanging security holder receives credit for the length of time the exchanged security was held.[31]

B. Proposed Rule 11c–1

Proposed rule 11c–1 would exempt certain exchange offers involving unit investment trusts from section 11(c). The rule would allow a registered UIT [32] or its sponsor or principal underwriter (collectively, "the offering trust") to make an exchange offer to unitholders of the same series or another series of the same trust or to unitholders of a UIT having the same sponsor without prior Commission approval, provided certain conditions are met.[33]

As described above, the exemptive orders granted under section 11(c) have allowed an offering trust to charge a fixed "reduced sales charge" for an exchange of UIT units. The proposed rule, however, has been drafted to include the same type of sales load limitations that are found in proposed rule 11a–3.

As in rule 11a–3, proposed rule 11c–1 would allow the exchanging unitholder to be charged a sales load under certain conditions. Any sales load charged for the acquired units could be no more than the excess of the sales load ordinarily payable for the acquired units over any sales load paid for the exchanged units.[34] As in proposed rule 11a–3, the definition of "exchanged unit" would include the unit actually being exchanged and any unit previously exchanged for that unit or for any of its predecessors. Also, where either no sales load is imposed on the exchange or the sales load imposed is less than the sales load differential, the proposed rule would permit the following trust to require the exchanging unitholder to have held the exchanged unit for a minimum period of time.[35] When a unitholder exchanges less than all units held of a particular series, the unit upon which the highest sales load was previously paid would be considered exchanged first. Finally, unlike proposed rule 11a–3, proposed rule 11c–1 would not provide for the imposition of an administrative fee on an exchange transaction. To date UIT applicants have not requested exemptions to charge exchanging unitholders such fees. The Commission, however, specifically requests comment on whether it is necessary and appropriate to include an administrative fee provision in proposed 11c–1.

Cost/Benefit of Proposed Action

Proposed rules 11a–3 and 11c–1 would not impose any significant additional burdens on mutual funds or UITs and would reduce the costs that they already incur by virtually eliminating the need to file exemptive applications. The Commission would also benefit because its staff would have to review very few exemptive applicators in this area.

The Commission specifically invites comments on its assessments of the costs and benefits associated with the proposal, including estimates of any costs and benefits perceived by commentators.

Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding proposed rules 11a–3 and 11c–1. The Analysis explains that proposed rule 11a–3 would permit certain offers of exchange between mutual funds while

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[28] *See* section 26(d) of article III of the Rules of Fair Practice.

[29] The exemptive orders have permitted minimum holding periods ranging from 30 days to six months. *See supra* note 11 and accompanying text.

[30] *See supra* note 16; *cf.* exemptive applications cited *supra* in notes 17 and 18.

[31] *See* rule 11a–2(d) which also requires cumulative tacking of time in calculating a deferred sales load on an acquired security.

[32] The rule would except registered separate accounts in view of the relief from section 11 already available to those offerors under rule 11a–2. *See supra* note 8 and accompanying text.

[33] Although section 11(c) extends beyond exchanges of UIT units to include exchanges of UIT units for securities issued by mutual funds or closed-end investment companies, only a few exemptive applications have dealt with these offers. *See, e.g., In the Matter of Lexington Corporate Leaders, Fund, Inc.*, Investment Company Act Release No. 5509 (October 11, 1968) (exemptive application for offer to exchange UIT units for mutual fund shares). In view of the apparent rarity of these offers, they are not addressed by the proposed rule.

As drafted, the proposed rule would not codify several recent exemptive orders that have permitted a UIT or its sponsor to make an exchange offer known as a "conversion offer" to holders of units of UITs that have a different sponsor. Generally, under the terms of these orders, coverting unitholders pay the same reduced sales charge that unitholders would pay for an exchange within the same UIT family. Given the relative novelty of this type of exchange offer, the Commission requests comment on whether the final version of the rule should make exemptive relief available for such offers and, if so, under what circumstances. *See e.g.*, Trust Southwest Tax Exempt Income Trust, et al., Investment Company Act Release Nos. 15082 (May 2, 1986) [51 FR 17432] and 15121 (May 29, 1986). *See also* Bear, Stearns & Co., et al., Investment Company Act Release Nos. 11143 (April 29, 1980) and 11184 (May 23, 1980) (conversion offer where the offerees are limited to unitholders of any registered UIT for which no secondary market is being maintained).

[34] The rule does not address exchange offers involving UIT units subject to deferred sales loads because, outside of the insurance products area, it is the Commission's understanding that sales loads are rarely deferred on UIT units.

[35] *See supra*, note 29 and accompaning text. The Commission seeks comment on whether proposed rule 11c–1 should *require* a minimum holding period and, if so, whether it should specify the length of the minimum holding period.

proposed rule 11c–1 would permit such offers between unit investment trusts (UITs). It states that the proposed rules are intended to protect investors from the abuses that led to the enactment of section 11, and to significantly reduce the number of exemptive applications filed with the Commission regarding exchange offers. The Analysis indicates that the proposed rules contain no reporting or recordkeeping requirements, but that approved rule 11a–3 requires disclosure of any administrative fee charged on an exchange transaction. To the extent that the proposed rules would eliminate the need for mutual funds and UITs to file applicators seeking exemption from section 11, they will reduce the costs incurred by smaller entities in preparing and filing exemptive applications. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Brian P. Kindelan, Esq., Mail Stop 5–2, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed New Rules

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as shown.

1. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 38, 40, 54, 54 Stat. 841, 842, 15 U.S.C 80a–37, 80c–89 * * * §§ 270.11a–3 and 270.11c–1 also issued under sec. 6(c) [15 U.S.C. 80a–(6)(c)].

2. By adding § 270.11a–3 to read as follows:

§ 270.11a–3 Exemption from section 11(a) for certain offers of exchange.

(a) Notwithstanding section 11(a) of the Act [15 U.S.C. 80a–11(a)], a registered open-end investment company (other than a registered separate account) or any principal underwriter thereof (collectively, the "offering company") may make or cause to be made an offer to the holder of a security of that company or of another open-end investment company within the same family of investment companies as the offering company to exchange that security for a security of the offering company (the "acquired security") on the basis of the relative net asset values of the respective securities to be exchanged except that the security holder may be charged a nominal administrative fee or a sales load; *Provided that:*

(1) Any administrative fee or scheduled variation thereof is uniformly applied to all offerees of the class specified;

(2) Any sales load charged with respect to the acquired security is no greater than the excess, if any, of the sales load applicable to that security in the absence of an exchange over any sales load previously paid on the exchanged security;

(3) Any deferred sales load charged with respect to the acquired security is calculated as if the holder of the acquired security had held that security from the date on which he became the holder of the exchanged security;

(4) No redemption fee is imposed with respect to the exchanged security;

(5) The prospectus of the offering company discloses any administrative fee imposed on an exchange transaction for its securities, as well as any administrative fee imposed on its security holders to acquire the securities of other investment companies in an exchange transaction; and

(6) Any sales literature or advertising that describes the exchange offer discloses any administrative fee.

(b) Where either no sales load is imposed on the acquired security or the sales load imposed is less than the maximum allowed by paragraph (a)(2) of this section, the offering company may require the exchanging shareholder to have held the exchanged security for a minimum period of time previously established by the offering company and uniformly applied to all offerees of the class specified.

(c) For purposes of this rule:

(1) "Deferred sales load" means any sales load, including a contingent deferred sales load, deducted upon redemption of all or a portion of a security holder's interest in an open-end investment company;

(2) "Exchanged security" means (i) the security actually exchanged pursuant to an exchange offer and (ii) any security previously exchanged for such security or for any of its predecessors;

(3) "Family of investment companies" means any two or more registered open-end investment companies that have the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services; and

(4) In calculating any sales load charged with respect to the acquired security:

(i) Where a security holder exchanges less than all of his securities, the security upon which the highest sales load was previously paid is deemed exchanged first; and

(ii) Where the exchanged security was acquired through dividend reinvestment or capital gains distribution, that security is deemed to have been sold with a sales load equal to the sales load previously paid on the security on which the dividend was paid or distribution made.

3. By adding § 270.11c–1 to read as follows:

§ 270.11c–1 Exemption from section 11(c) for certain offers of exchange.

(a) Notwithstanding section 11(c) of the Act [15 U.S.C. 80a–11(c)], a registered unit investment trust (other than a registered separate account) or any sponsor or principal underwriter thereof (collectively the "offering trust") may make or cause to be made an offer to the holder of a unit of the same series or another series of the offering trust, or of any other registered unit investment trust having the same sponsor or sponsors as the offering trust to exchange that unit for a unit of the offering trust (the "acquired unit") on the basis of the relative net asset values of the respective units to be exchanged except that the unitholder may be charged a sales load; *Provided, that,* any sales load charged with respect to the acquired unit is no grater than the excess, if any, of the sales load applicable to the acquired unit in the absence of an exchange over any sales load previously paid on the exchanged unit.

(b) Where either no sales load is imposed on the acquired unit or the sales load imposed is less than the maximum allowed by paragraph (a) of this section, the offering trust may require the exchanging unitholder to have held the exchanged unit for a minimum period of time previously established by the offering trust and uniformly applied to all offerees of the class specified.

(c) For purposes of this rules:

(1) "Exchanged unit" means (i) the unit actually exhanged pursuant to an exchange offer and (ii) any unit previously exchanged for such unit or for any of its predecessors; and

(2) In calculating any sales load charged with respect to the acquired unit, where a unitholder exchanges less than all of his units, the units upon which the highest sales load was previously paid is deemed exchanged first.

By the Commission.
Jonathan G. Katz,
Secretary.
December 23, 1986.
[FR Doc. 86-29323 Filed 12-30-86; 8:45 am]
BILLING CODE 8010-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62048A; FRL-3135-7]

Regulations Required by the Asbestos Hazard Emergency Response Act of 1986

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: EPA is soliciting comments on the development of regulations required by the Asbestos Hazard Emergency Response Act of 1986 (AHERA) to reduce asbestos exposure in public and private elementary and secondary schools. AHERA requires EPA to issue proposed regulations by April 20, 1987 and issue final regulations by October 17, 1987. EPA requests comments on a variety of technical and policy issues which must be addressed in order to develop these regulations.

DATE: Comments regarding this document must be submitted in triplicate by January 30, 1987.

ADDRESS: Comments should be submitted to: Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Comments should include the document control number (OPTS-62048A) and will be available for reviewing and copying from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays, in Room NE-G004 at the address given above.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, Office of TSCA Assistance (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460 (202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

On October 22, 1986, President Reagan signed into law the Asbestos Hazard Emergency Response Act of 1986, Pub. L. 99-519. AHERA requires EPA to develop regulations which include requirements for local education agencies to conduct inspections of their school buildings for asbestos-containing materials (ACM), develop asbestos management plans and submit these plans to their State Governor, and implement appropriate response actions.

As required by section 203(a) of AHERA, Pa is issuing this advance notice of proposed rulemaking to solicit comments and information about the development of rules under AHERA. Interested persons may comment generally about the regulations, or they may wish to comment or provide information about the issues listed in Unit III of this notice.

Interested persons are also referred to EPA's advance notice of proposed rulemaking published in the **Federal Register** of August 12, 1986 (51 FR 28914), entitled "Asbestos-Containing Materials in Schools; Inspection, Notification, Management Plans and Technical Assistance." The Agency directs special attention to Unit II entitled "Data Requested" (51 FR 28914), and Unit III.B, entitled "Full Regulatory Approach" (51 FR 28917), and requests additional comment on these units in light of the passage of AHERA. Comments already submitted to EPA in response to the August notice will be incorporated as part of the record for this notice.

II. Major Requirements of AHERA

Under AHERA, EPA is directed to promulgate regulations which provide a framework for addressing asbestos problems in public and private schools. The statute sets deadlines of 180 days after enactment for EPA to issue proposed rules and 360 days for issuance of final rules. EPA must develop regulations which include requirements for: (1) The inspection of all public and private school buildings for ACM; (2) the identification of circumstances requiring response actions; (3) descriptions of the appropriate response actions; (4) the implementation of response actions; (5) the establishment of a periodic surveillance program for ACM; (6) the establishment of an operations and maintenance program for friable ACM; (7) the preparation and implementation of asbestos management plans by local educational agencies and the submission of the management plans to State Governors, who may review the plans and approve or disapprove them; and (8) the transportation and disposal of waste ACM from schools.

III. Issues

EPA is seeking comments and information from all persons potentially affected by the regulations. Specifically, the Agency encourages responses from school administrators and employees, environmental consulting or architectural and engineering firms that conduct asbestos inspections and assessments, asbestos abatement contractors, State and local officials that manage asbestos programs, and all associations, unions, and interest groups involved in the issue of asbestos in schools.

EPA would like to receive comments and information on all issues for which comment was requested in the ANPR of August 12, 1986 and on the following issues:

1. What is the average cost of inspecting a school for both friable and non-friable ACM? Are these costs calculated on the basis of square footage, per hour cost or other factors?

2. Should inspections include checking for ACM in products other than building materials (e.g., products used in laboratories or industrial arts shops)? What types of these products are found in schools?

3. What documentation of previous inspections should be necessary for exclusion from AHERA inspection regulations? Should a previously inspected school building be exempted if the inspection did not check for non-friable materials?

4. Should EPA require use of its revised sampling scheme for bulk sampling recommended in the EPA document "Asbestos in Buildings: Simplified Sampling Scheme for Friable Surfacing Materials?"

5. Should EPA allow a local education agency's (LEA) inspections and management plan development to be performed by the same person? Should EPA require an LEA to employ abatement contractors that have no financial relationship with the inspector or management plan developer so as to avoid potential conflicts to interest that could lead to unnecessary abatement projects or increased costs? In locations where only a limited number of such persons are available, what should be the consequences of this requirement?

6. What is the average time and cost for development of an asbestos management plan for a primary or secondary school?

7. What is the average time a latex paint-based encapsulation is effective? What is the average time an enclosure structure is effective? What are the major drawbacks associated with these methods? What are the recent developments in technology for these methods? How does the cost of an enclosure or encapsulation project

compare to the cost of a removal project for a given area?

8. What is the average cost associated with conducting operations and maintenance programs? Of the many practices which could be included in an operations and maintenance program, which should be required as part of the AHERA regulations? What procedures should an operations and maintenance program include for non-friable ACM?

9. Should EPA require its currently recommended procedure which compares indoor and outdoor levels statistically to clear the buildings? What has been the experience of abatement professionals in using the clearance testing recommended in the EPA document "Measuring Airborne Asbestos Levels following an Abatement Action" and the document "Guidance for Controlling Asbestos in Buildings?" Of particular concern to EPA are the actual air monitoring data obtained from the clearance of abatement jobs. Data, air volumes, sampling rates, description of site, detection limits, transmission electron microscopy analytical protocol, location of samplers, and any other pertinent information will be helpful to the Agency in determining the feasibility of requiring such a test.

10. Should EPA require a specific air-monitoring level for building clearance following abatement actions? Which air monitoring method should be required?

11. How should EPA apply the AHERA standard of "least burdensome methods which protect human health and the environment?"

12. What process should be established for determining whether all or part of a State asbestos program should be granted a waiver from AHERA requirements?

13. In the EPA model accreditation plan for States, what should be the length and content of the training courses for inspectors, management plan developers and abatement personnel? Should hands-on training be required for abatement pesonnel?

14 Should EPA require training for abatement workers in addition to supervisors? What should be the length and content of a training course for workers?

15. How frequently should re-training be required for inspectors, plan developers, and abatement personnel and what is the appropriate length of such a course?

IV. Public Record

EPA has established a record for this proceeding (docket control number OPTS-62048A).

The record includes information considered by EPA in developing this ANPR. EPA will supplement the record with additional information as it is received. The record now includes the following categories of information:

(1) **Federal Register** Notices.

(2) Support documents.

(3) Reports.

(4) Comments received from advance notice of rulemaking published in **Federal Register** of August 12, 1986 (51 FR 2894).

A public version of the record is available from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in the Public Information Office, Rm. NE-G004 NE Mall, 401 M St., SW., Washington, DC.

Dated: December 20, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-29354 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-322-P]

Medicare Program; Review of Information Collection and Recordkeeping Requirements for Home Health Agencies, Independent Laboratories, and Providers of Outpatient Physical Therapy and/or Speech Pathology Service

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: The proposed rules change several regulations to reduce the information collection and recordkeeping requirements. The requirements identified by the Office of Management and Budget are contained primarily in the Medicare conditions of participation for home health agencies and providers of outpatient physical therapy and outpatient speech pathology services, and the Medicare conditions for coverage of the services of independent laboratories and physical therapists in independent practice. The purpose of this document is to propose removal or modification of certain information collection and recordkeeping requirements, to furnish rational for retaining others, and to solicit public comments on the proposals for elimination, change, or retention.

DATE: To ensure consideration, comments must be received by March 2, 1987.

ADDRESSES: Address comment in writing to:

Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: BERC-322-P, P.O. Box 26676, Baltimore, Maryland 21207

Please address a copy of comments to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for HCFA, Room 3208, New Executive Office Building, Washington, DC 20503

In commenting, please refer to file code BERC-322-P. If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, 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. (202-245-7890).

FOR FURTHER INFORMATION CONTACT: Stefan Miller, (301) 597-6394.

SUPPLEMENTARY INFORMATION:

I. Background

The Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) authorizes the Office of Management and Budget (OMB) to review all information collection and recordkeeping requirements in Federal regulations. On March 31, 1983, at 48 FR 13666, OMB published regulations (5 CFR 1320.14) to implement this authority. Under § 1320.14(f) of the regulations, the agency responsible for the regulations is required to publish in the **Federal Register** a notice informing the public that OMB has proposed changes in the information collection or recordkeeping requirements be made and has approved continuation of the existing requirements for the time needed to consider proposed changes. On August 9, 1985 (50 FR 32238), we published a **Federal Register** notice to comply with the above stated requirements. In several clearance actions, OMB has required changes in the following information collection or recordkeeping requirements and has approved continuation of these requirements for the time needed to consider proposed changes: §§ 405.1221,

405.1223(b), 405.1229, 405.1315(f), 405.1316(f), 405.1720(b), and 405.1721(a). In addition, OMB required that we solicit public comments on all recordkeeping requirements in Subparts L, M, and O.

II. Specific Proposals

In accordance with OMB requirements, we are soliciting comments on all recordkeeping requirements in Subpart L, M, and O. We are also proposing to make changes in the sections identified above and any others where we feel recordkeeping requirements can be reduced or simplified. Below we provide a summary of the current provisions, a description of the statutory basis for each requirement, and our recommendation for removal, modification, or retention. We request comments on all three types of proposals.

A. 42 CFR 405, Subpart L—Conditions of Participation; Home Health Agencies

Most of the Subpart L requirements discussed below are not specified in the statute. Where there is such specificity in the law it is identified. Otherwise, as noted below, the provisions are issued under the authority of section 1861(o)(6) of the Act, which specifies that HHAs must meet other health and safety requirements the Secretary finds necessary; and, in some cases, as also noted below, under section 1861(o)(2) of the Act, which requires that HHAs have policies established by a group of professional personnel and provide for supervision of the services by a professional nurse.

• Section 405.1221(e) *Condition of participation: Organization, services, administration. Standard: Personnel policies.* This standard requires that HHA to develop personnel policies and to gather and maintain information relating to job descriptions, qualifications, licensure, health examinations, and performance evaluations.

Statutory Basis

Sections 1861(o) (2) and (6) of the Act.

Revision/Rationale

We propose to modify the detailed list of personnel records in § 405.1221(e) that must be maintained by deleting those requirements which do not directly impact patient care. We would, however retain the requirement that evidence of professional qualifications and licensure be included as part of the personnel record system because we believe that HHAs should continue to be responsible for ensuring that personnel who treat patients are professionally qualified.

Section 405.1221(f) *Condition of participation: Organization, services, administration. Standard: Personnel under hourly or per visit contracts.* This standard requires the HHA to enter into a written contract with those persons furnishing services other than salaried employees. The contract must specify the types of services furnished, the responsibilities of the contractors (including the submission of clinical records reports), and the procedures for determining charges and reimbursement.

Statutory Basis

Section 1861(o)(6) of the Act. Sections 1861(v)(5) and 1861(v)(1)(I) of the Act contain reimbursement provisions that are consistent with the last of the listed requirements.

Revision/Rationale

We propose to revise §405.1221(f) by removing the explicit contractual requirements such as designation of the procedures for submission of clinical record information, and the manner in which services will be controlled, coordinated and evaluated by the agency. We propose instead to require that personnel under contract be held accountable for meeting the same agency requirements as salaried personnel as set forth in this subpart.

• Section 405.1221(g) *Condition of participation: Organization, services, administration. Standard: Coordination of patient services.* This standard requires that the clinical record support the HHA's attempts to ensure a free flow of information exchange among all personnel furnishing services.

Statutory Basis

Sections 1861 (o)(3) and (o)(6) of the Act. Section 1861(o)(3) requires an HHA maintain patient clinical records on all patients. However, there is no specific provision relating to content and structure of the records.

Revision/Rationale

We propose to clarify the language of § 405.1221(g) but do not propose to amend the standard substantively. We believe that where single or multiple services are furnished, it is important that coordination of patient care remain as an essential part of an agency's responsibility. This is necessary so that other professionals may be able to more effectively tailor patient treatment programs.

• Section 405.1221(i) *Condition of participation: Orgnaization, services, administration. Standard: Institutional planning.* This standard requires that each HHA conform to certain broad requirements relating to the formulation of an annual operating budget and an agency generated 3-year capital expenditure program for anticipated expenditures that exceed a set dollar amount.

Statutory Basis

Section 1861(o)(5) of the Act requires that an HHA have "* * * in effect an overall plan and budget that meets the requirements of * * * [section 1861[(z)."

Revision/Rationale

We propose only to increase from $100,000 to $600,000 the dollar amount of capital expenditures above which the plan must provide details. This change is required by section 1122(g) and 1861z of the Social Security Act, which were amended by section 607 of the Social Security Amendments of 1983, Pub. L. No. 98–21, to increase the threshold amount to $600,000. The other provisions of this section are explicitly required in section 1861(z) or are necessary for purposes of determining whether the statutory $600,000 threshold figure has been exceeded.

• Section 405.1223(a) *Condition of participation: Acceptance of patients, plan of treatment, medical supervision. Standard: Plan of treatment.* This standard specifies the development of a written plan of treatment established and periodically reviewed by a physician and details the requirements of the plan of treatment.

Statutory Basis

Section 1861(m) of the Act provides that a patient must be under the care of a physician who establishes and periodically reviews a plan of care.

Revision/Rationale

We propose to retain this standard as it is constructed. We believe it necessary to ensure inclusion of necessary information to protect patient health and provide adequate quality care. Further, we believe changes in its composition are unlikely to affect most HHA's information colection burdens since HHAs routinely attempt to obtain all information pertinent to patient care. However, we do request comments on the continued need for these requirements.

• Section 405.1223(b) *Condition of participation: Acceptance of patients, plan of treatment, medical supervision. Standard: Periodic review of plan treatment.* This standard requires that the status of every patient be reviewed at least once every 60 days by HHA staff and the attending physician.

Statutory Basis

Section 1861(m) of the Act requires that each patient be under the care of a physician who periodically review the plan of care.

Revision/Rationale

We propose to continue to require review of the plan of treatment periodically by a physician because it is required under section 1861(m) of the Act. We believe that the physician assessment of a patient's status periodically, can effectively identify and help to prevent potential problems which, if they remain unresolved, may lead to a more lengthy treatment program.

Currently, Federal regulations at 42 CFR 405.1223(b) implement section 1861(o) of the Act and require, as a health and safety condition of participation, that home health agencies have plans of treatment signed by the physician no less frequently than once every 60 days. Regulations at 42 CFR 405.1633(b) implement sections 1814(a)(2) and 1835(a)(2) of the Act and require that, for Medicare payment purposes, the home health agency acquire a signature on the physician certification no less frequently than every two months (i.e., 62 days). The intent of both of these regulations is embodied in the Medicare Uniform Plan Treatment (form HCFA 485 which must accompany the first bill and the bill closest to every 60 days thereafter) and uses one physician signature for both purposes. We believe that although these regulations implement different (but related) statutory provisions, they should be implemented in a consistent manner. This manner of implementation would prevent home health agencies which acquire the physician's signature only every 62 days rather than every 60 days from being cited for non-compliance with the conditions of participation, although patient health and safety are not being jeopardized.

We propose to change the timeframe for the physician review of the plan of treatment from 60 days to 62 days. We believe that making this change will not jeopardize patient health and safety, but will resolve a conflict within Federal regulations which causes home health agencies to be inappropriately penalized.

- Section 405.1224(a) *Condition of participation: Skilled nursing service. Standard: Duties of the registered nurse.* and section 405.1224(b)—*Standard: Duties of the licensed practical nurse.* These standards describe the duties of registered nurses and licensed practical nurses including the duties to prepare clinical and progress notes.

Statutory Requirement

Sections 1861 (m)(1) and (o)(6) of the Act. Section 1861(m)(1) provides that part-time or intermittent nursing care be under the supervision of a registered nurse.

Revision/Rationale

We propose no specific changes to § 405.1224 (a) and (b) at this time because the nursing duties and clinical record responsibilities cited therein are consistent with accepted professional standards of practice and, hence, should not be burdensome. However, we do request comments on the continued need for these requirements.

- Section 405.1225(a) *Condition of participation: Therapy services. Standard: Supervision of physical therapist assistant and occupational therapy assistant.* This section sets forth standards for supervision of physical therapist and occupational therapy assistants by a qualified physical or occupational therapist and the preparation of clinical and progress notes.

Statutory Basis

Section 1861(o)(6) of the Act.

Revision/Rationale

We propose no specific changes to § 405.1225(a) at this time because the duties and clinical record responsibilities of assistants are consistent with accepted professional standards of practice and therefore impose virtually no additional burden. However, we do request comments on the continued need for these requirements.

- Section 405.1226—*Condition of participation: Medical social services.* This section sets forth medical social services responsibilities including preparing clinical and progress notes on the patient's condition and assisting in the development of the plan of treatment.

Statutory Basis

Section 1861(m)(3) of the Act provides for the underlying statutory authority, coupled with Section 1861(o)(6) that medical social services be under the direction of a physician.

Revision/Rationale

We propose no specific changes to § 405.1226 at this time because the duties and responsibilities of social work personnel are consistent with accepted professional standards and therefore impose virtually no additional burden. However, we do request comments on the continued need for these requirements.

- Section 405.1228—*Condition of participation: Clinical records.* This section contains specific requirements for maintaining, retaining and protecting clinical records for every patient receiving home health services.

Statutory Basis

Section 1861(o)(3) of the Act specifies that an HHA must maintain clinical records on all patients.

Revision/Rationale

We believe that the current recordkeeping requirements in § 405.1228 are necessary to ensure that information pertinent to each patient's treatment program is made available to all personnel. We propose only a technical change to the existing language of the regulation and request comments on the continued need on each of the recordkeeping items.

- Section 405.1229(a)—*Condition of participation: Evaluation. Standard: Policy and administrative review.* This standard requires an HHA to assess the overall status of its patient care programs. One method of furthering this evaluation is to collect patient care and related data. This standard suggests selected data which an HHA might find useful in the course of its evaluation.

Statutory Basis

Sections 1861(o)(2) and 1861(o)(6) of the Act.

Revision/Rationale

We propose to delete from § 405.1229(a) the detailed list of data items. Each HHA's evaluation procedure may need to be tailored to its unique characteristics. Therefore, we believe that the selection of data is best made by the HHA concerned.

B. 42 CFR Part 405, Subpart M—Conditions for Coverage of Services of Independent Laboratories

There is no specific statutory requirement for the individual Subpart M requirements discussed below. The requirements were issued under the authority of section 1861(s)(12) of the Act, which provides that laboratories must meet other health and safety requirements that the Secretary finds necessary. The Center for Disease Control (CDC) of the United States Public Health Service, together with HCFA, share responsibility for these health and safety requirements. HCFA and CDC participated in a joint review of the requirements discussed below to

ensure the appropriateness of standards, and will undertake a joint review of all laboratory comments received as a result of this publication. All comments should be submitted as indicated in the ADDRESS section of this preamble.

• Section 405.1314(a)(2)—*Condition—Clinical laboratory; tests performed. Standard: Proficiency testing.* This standard specifies requirements for maintaining records of all proficiency testing results in programs in which laboratories are participants and makes these records routinely available to all State survey agencies, with certain exceptions.

Statutory Basis

Section 1861(s)(12) of the Act.

Revision/Rationale

We propose no substantive changes to § 405.1314(a)(2) at this time because we believe that records of observations during testing of samples are critical because they allow laboratories to identify reasons for errors in testing and to identify trends in performance problems. However, we are making minor editorial revisions and deleting outdated references. We request comments on these requirements and suggestions regarding alternative approaches.

• Section 405.1315(f)—*Condition—clinical laboratory; technical personnel. Standard: Personnel policies.* This standard requires a laboratory to maintain personnel policies as well as maintain employee records to include training and experience, results of preemployment physical examinations, and accidents occurring while on duty.

Statutory Basis

Section 1861(s)(12) of the Act.

Revision/Rationale

We would revise the standard to require that records be maintained to demonstrate that (1) each employee is qualified for his or her position by means of training and experience, and (2) employees receive adequate health supervision. We believe that laboratories should be responsible for ensuring that personnel who perform services for patients are professionally qualified and screened for communicable diseases. However, we would not specify how these records are to be structured.

• Section 405.1316(a)—*Condition—clinical laboratory; management. Standard: Laboratory procedure manual.* This standard requires a laboratory to maintain records and a compilation of all automated and manual methods for tests which are performed in or offered by the laboratory.

Statutory Basis

Section 1861(s)(12) of the Act.

Revision/Rationale

As a result of our review we have identified requirements that are duplicated and can be deleted. We would delete the laboratory procedure manual standard at § 405.1316(a) since the procedure manual requirement is required in § 405.1317(a)(4). A laboratory procedure manual standard was included in the existing regulations because we believed it was important to assure that the staff is provided a predetermined plan of how to perform procedures and how to assure the accuracy and reliability of results. Section 405.1316(b), (c), (d), (e), (f) and (g) would be redesignated as § 405.1316 (a), (b), (d), (e) and (f) respectively.

• Section 405.1316(f)— Condition—clinical laboratory; management. Standard: Specimens-records. This standard requires a laboratory to maintain accurate records of specimens tested, and information identifying their subsequent disposition.

Statutory Basis

Section 1861(s)(12) of the Act.

Revision/Rationale

We would redesignate § 405.1316(f) as § 405.1316(e) and delete overly prescriptive information collection requirements that specify the types of records which must be maintained.

• Section 405.1316(g). *Condition—clinical laboratory; management. Standard: Laboratory report and record.* This standard requires a laboratory director to promptly send the laboratory report to the licensed physician or other authorized person who requested the test. It also requires that a suitable record of each test result be maintained for a period of at least 2 years after the date of submittal of the report or for a period of time required by State law for such records, whichever is longer.

Statutory Basis

Section 1861(s)(12) of the Act.

Revision/Rationale

We would redesignate § 405.1316(g) as § 405.1316(f), make an editorial change and delete reference to State law record retention requirements since the existing two year Federal requirement is adequate for purposes of the Medicare program. Federal regulations do not have to reinforce State law requirements; the State can enforce its own requirements.

• Sections 405.1317 (a)(4) (a)(5) and (a)(6). *Condition—quality control. Standard: General.* These sections require the availability at all times of certain manuals and other written instructions in the immediate bench area of personnel engaged in examining specimens and performing related procedures within a category; written approval by the director or supervisor of all changes in laboratory procedures; and the maintenance and availability of laboratory records to laboratory personnel as well as to the Secretary.

Statutory Basis

Section 1861(s)(12) of the Act.

Revision/Rationale

We would revise § 405.1317(a)(4) by combining in one location requirements relating to procedure manuals which are currently contained in both § 405.1316(a) and § 405.1317(a)(4)(i). The reference to automated test equipment would be removed from § 405.1316(a) and that paragraph would be revised and incorporated in § 405.1317(a)(4)(v), along with the current § 405.1317(a)(5). Since the term, "automated test equipment," has not been defined in the regulations, ambiguity exists concerning its applicability. As a result, the regulation would be modified to reflect that if any test system becomes inoperable, regardless of whether it is automated, manual, or involves equipment at all, the laboratory must have a protocol for maintaining alternative methods to either store the specimens or perform the test. Laboratories may not be able to perform tests for a variety of reasons other than automated equipment failure. Such reasons include power failures, insufficient reagents to perform the tests, absence of personnel to perform special procedures and related problems. Thus, for all test systems, the laboratory must define its alternative methods such as storing the specimens under appropriate conditions to ensure their integrity, sending the specimens to another laboratory, or whatever actions are necessary to assure that the laboratory can obtain valid test results. The critical consideration is not the degree of automation but the assurance of quality, and the revision would clarify this point. Section 405.1317(a)(6) would be redesignated as a new § 405.1317(a)(5). We propose no substantive revision to the requirements in redesignated § 405.1317(a)(5) at this time. Instead, we invite comments on which requirements are still needed to ensure reliable and accurate testing, and which may no longer be necessary.

• Section 405.1317(b)(3). *Condition—quality control. Standard: quality control system—methodologies. Clincal Chemistry.* This standard specifies the method and frequency for checking laboratory instruments used in clinical chemistry and the maintenance of records for this purpose.

Statutory Basis

Section 1861(s)(12) of the Act.

Revision/Rationale

We plan no revision to § 405.1317(b)(3) at this time. The requirement that the measurement of specimens be done on equipment that must be calibrated and controlled was originally included because it was believed necessary to ensure accurate and precise results. Maintenance of records of previous calibrations was believed to be necessary to assist in the recalibration effort. We invite review and specific comment on whether these recordkeeping requirements are still necessary.

C. 42 CFR Part 405 Subpart Q—Conditions of Participation: Clinics, Rehabilitation Agencies, and Public Health Agencies as Providers of Outpatient Physical Therapy and/or Speech Pathology Services; and Conditions for Coverage: Outpatient Physical Therapy Services Furnished by Physical Therapists in Independent Practice

• Section 405.1720(b). *Condition of Participation—rehabilitation program. Standard: Arrangements for social or vocational services.* This standard permits rehabilitation agencies to provide social or vocational adjustment services under a written contract with others (that is, other than salaried employees), provided the agency retains responsibility for, and control and supervision of, these services. The terms of the contract are specified in detail.

Statutory Basis

Section 1861(p)(4)(A)(i) of the Act requires that each clinic or agency have the necessary personnel to carry out the programs offered. Section 1861(p)(4)(A)(v) provides that clinics and agencies must meet other health and safety requirements that the Secretary finds necessary.

Revision/Rationale

We propose to revise the regulation at § 405.1720(b) by removing explicit contractual requirements such as the geographic areas in which services are to be furnished, the completion and submission of clinical record information, and the participation in conferences required to coordinate patient care. We propose instead to require that personnel under contract be held accountable for meeting the same agency requirements as salaried personnel as set forth in this subpart, and that the agency be responsible for control and supervision of the services.

• Section 405.1721(a). *Condition of participation—arrangements for physical therapy and speech pathology services to be performed by other than salaried organization personnel. Standard: Contract provisions.* This standard contains specific requirements for the terms of a contract under which an organization provides outpatient physical therapy or speech pathology services under an arrangement with others.

Statutory Basis

Section 1861(p)(4)(A)(i) of the Act requires that each clinic or agency have the necessary personnel to carry out the programs offered. Section 1861(p)(4)(A)(v) provides that clinics and agencies must meet the health and safety requirements the Secretary finds necessary.

Revision/Rationale

We propose to delete the list of contractual provisions and instead require that all nonsalaried personnel furnishing services meet the same requirements as salaried personnel. We are also proposing to make a conforming change to this section to make it consistent with other proposed changes published in the **Federal Register** on February 24, 1986, (51 FR 6429) that would include "podiatrist" in the definition of "physician".

• Section 405.1722. *Condition of participation—clinical records.* This section specifies requirements for maintaining clinical records for providers of outpatient physical therapy and speech pathology services.

Statutory Basis

Section 1861(p)(4)(A)(iii) of the Act requires that providers of outpatient physical therapy and outpatient speech pathology services must maintain clinical records on all patients.

Revision/Rationale

We plan no changes to § 405.1722 at this time, because the recordkeeping requirements are consistent with accepted standards of care. However, we request comments on which of the requirements are still needed to ensure that medically necessary services of acceptable quality are furnished to program beneficiaries.

• Section 405.1736 (b) and (d) *Condition for coverage—clinical records. Standard: Content and Standard: Retention and preservation.* These standards specify requirements for the content and retention of clinical records by physical therapists in independent practice.

Statutory Basis

Section 1861(p)(4)(A)(iii) of the Act provides that independently practicing physical therapists must maintain clinical records on all patients. This section also provides that the physical therapist must meet those requirements that the Secretary may find necessary.

Revision/Rationale

We plan no changes to § 405.1736 (b) and (d) at this time because we believe that these recordkeeping activities are consistent with standard business practices and therefore, are not burdensome. We request comments on which of the requirements are still necessary to ensure the quality and appropriateness of services and which may no longer be necessary.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or result in significant adverse effects on competition, employment, investment, productivity, or innovation.

We examined each provision noted in the preamble for potential impacts (costs and benefits) on affected providers and suppliers. Several of the proposed changes would benefit providers and suppliers by reducing certain recordkeeping requirements (for example, those relating to personnel records and contractual provisions). We are proposing to retain several current requirements we believe are necessary to assure compliance with the intent of the standard. The cost effect of reduced reporting associated with this proposal would be very small. Compared to all other requrements, the time and manpower required by providers and suppliers during the survey process to demonstrate compliance with these requirements is minimal. We conclude, therefore, that the overall effect is negligible. Because no threshold criteria under E.O. 12291 would be exceeded, this proposal is not considered a major rule and an impact analysis is not required.

B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (5 U.S.C. Section 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. While all providers and suppliers subject to these conditions of participation or conditions for coverage are considered small entities, the impact of these requirements would be minimal on each institution or service. Therefore, the Secretary certifies under 5 U.S.C. 605(b) that this proposed rule would not result in a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

All sections of these proposed rules contain information collection requirements that the Office of Management and Budget has requested us to review. A notice will be published in the **Federal Register** when approval is obtained. Other organizations and individuals desiring to submit comment on the information collection requirement should follow the directions in the ADDRESS section of this preamble.

IV. Response to Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and discuss the issues in the preamble to that rule.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 405 would be amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Subpart L is amended as follows:

Subpart L—Conditions of Participation; Home Health Agencies

1. The authority citation for Subpart L continues to read as follows:

Authority: Secs. 1102, 1842, 1861, 1862, 1870 and 1871 of the Social Security Act; 42 U.S.C. 1302, 1395u, 1395x, 1395y, 1395gg, and 1395hh.

2. Section 405.1221 is amended as follows:

a. Paragraphs (e), (f), and (g) are revised to make the recordkeeping requirements less specific, more general.

§ 405.1221 Condition of participation: Organization, services, administration.

* * * * *

(e) *Standard: Personnel policies and records.* Personnel and patient care practices are supported by written policies, that are kept current. Personnel records include the qualifications of all clinical personnel as well as evidence of State licensure, where applicable.

(f) *Standard: Personnel under hourly or per visit contracts.* If personnel under hourly or per visit contracts are utilized by the home health agency, there is a written contract between such personnel and the agency clearly designating:

(1) That patients are accepted for care only by the primary home health agency,

(2) The services to be provided,

(3) That personnel furnishing services must meet the same requirements, responsibilities and policies as salaried personnel as set forth in this subpart, and

(4) The procedures for determining charges and reimbursement.

(g) *Standard: Coordination of patient services.* All personnel providing services maintain liaison to assure that their efforts effectively complement one another and support the objectives outlined in the plan of treatment. The clinical record or minutes of case conferences establish that interchange, reporting, and coordination of care occur. A written summary report for each patient is sent to the attending physician at least every 60 days.

* * * * *

§ 405.1221 [Amended]

b. In § 405.1221(i)(2) the first and second sentences, the capital expenditure amount above which detailed description is required is changed from "$100,000" and "$600,000".

3. In § 405.1223, paragraph (a) is reprinted without change, for comment and in revised paragraph (b) "60" is changed to "62" to read as follows:

§ 405.1223 Condition of participation: Acceptance of patients, plan of treatment, medical supervision.

* * * * *

(a) *Standard: Plan of treatment.* The plan of treatment developed in consultation with the agency staff covers all pertinent diagnoses, including mental status, types of services and equipment required, frequency of visits, prognosis, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, instructions for timely discharge or referral, and any other appropriate items. If a physician refers a patient under a plan of treatment which cannot be completed until after an evaluation visit, the physician is consulted to approved additions or modifications to the original plan. Orders for therapy services include the specific procedures and modalities to be used and the amount, frequency, and duration. The therapist and other agency personnel participate in developing the plan of treatment.

(b) *Standard: Periodic review of plan of treatment.* The total plan of treatment is reviewed by the attending physician and home health agency personnel as often as the severity of the patient's condition requires, but at least once every 62 days. Agency professional staff promptly alter the physician to any changes that suggest a need to alter the plan of treatment.

* * * * *

4. Sections 405.1224 (a) and (b) are reprinted without change, for comment:

§ 405.1224 Condition of participation: Skilled nursing service.

* * * * *

(a) *Standard: Duties of the registered nurse.* the registered nurse makes the initial evaluation visit, regularly re-evaluates the patient's nursing needs, initiates the plan of treatment and necessary revisions, provides those services requiring substantial and specialized nursing skill, initiates appropriate preventive and rehabilitative nursing procedures, prepares clinical and progress notes, coordinates services, informs the physician and other personnel of changes in the patient's condition and needs, counsels the patient and family in meeting nursing and related needs, participates in in-service programs, and supervises and teaches other nursing personnel.

(b) *Standard: Duties of the licensed practical nurse.* The licensed practical nurse provides services in accordance

with agency policies, prepares clinical and progress notes, assists the physician and/or registered nurse in performing specialized procedures, prepares equipment and materials for treatments observing aseptic technique as required, and assists the patient in learning appropriate self-care techniques.

5. Section 405.1225(a) is reprinted without change, for comment:

§ 405.1225 Condition of participation: Therapy Services.

* * * * *

(a) *Standard: Supervision of physical therapist assistant and occupational therapy assistant.* Services provided by a qualified physical therapist assistant or qualified occupational therapy assistant may be furnished under the supervision of a qualified physical or occupational therapist. A physical therapist assistant or occupational therapy assistant performs services planned, delegated, and supervised by the therapist, assists in preparing clinical notes and progress reports, and participates in educating the patient and family, and inservice programs.

* * * * *

6. Section 405.1226 is reprinted without change, for comment:

§ 405.1226 Condition of participation: Medical social services.

Medical social services, when provided, are given by a qualified social worker or by a qualified social work assistant under the supervision of a qualified social worker, and in accordance with the plan the treatment. The social worker assists the physician and other team members in understanding the significant social and emotional factors related to the health problems, participates in the development of the plan of treatment, prepares clinical and progress notes, works with the family, utilizes appropriate community resources, participates in discharge planning and inservice programs, and acts as a consultant to other agency personnel.

7. Section 405.1228, the term "provided" is substituted for the term "rendered" in the introductory language, and paragraphs (a) and (b) are reprinted without change, for comment as revised, § 405.1228 reads as follows:

§ 405.1228 Condition of participation: Clinical records.

A clinical record containing pertinent past and current findings in accordance with accepted professional standards is maintained for every patient receiving home health services. In addition to the plan of treatment (see § 405.1223(a)), the record contains appropriate identifying information; name of physician; drug, dietary, treatment, and activity orders; signed and dated clinical and progress notes (clinical notes are written the day service is provided and incorporated no less often than weekly); copies of summary reports sent to the physician; and a discharge summary.

(a) *Standards: Retention of records.* Clinical records are retained for 5 years after the month the cost report to which the records apply is filed with the intermediary, unless State law stipulates a longer period of time. Policies provide for retention even if the home health agency discontinues operations. If a patient is transferred to another health facility, a copy of the record or abstract accompanies the patient.

(b) *Standards: Protection of records.* Clinical record information is safe guarded against loss or unauthorized use. Written procedures govern use and removal of records and conditions for release of information. Patient's written consent is required for release of information not authorized by law.

8. Section 405.1229 is amended by revising paragraph (a) to remove the last sentence which lists data suggested for inclusion in the review. As revised, § 405.1229(a) reads as follows:

§ 405.1229 Condition of participation—Evaluation.

* * * * *

(a) *Standard: Policy and administrative review.* As a part of the evaluation process the policies and administrative practices of the agency are reviewed to determine the extent to which they promote patient care that is appropriate, adequate, effective, and efficient. Mechanisms are established in writing for the collection of pertinent data to assist in evaluation.

* * * * *

B. Subpart M is amended as follows:

Subpart M—Conditions for Coverage of Services of Independent Laboratories

1. The authority citation for Subpart M continues to read as follows:

Authority: Secs. 1102, 1861(s)(10) and (11), 1864, 1871, of the Social Security Act; 49 Stat. 647 as amended, 79 Stat. 322, 79 Stat. 325–326, 79 Stat. 331; 42 U.S.C. 1302, 1395x(s)(10) and (11), 1395aa, and 1395hh.

2. In section 405.1314, paragraph (a) introductory text is reprinted for reader comprehension and paragraph (a)(2) is revised to remove outdated date references, with no change in the proficiency testing requirements, to read as follows:

§ 405.1314 Condition—clinical laboratory; tests performed.

* * * * *

(a) *Standard: Proficiency testing.* All clinical laboratories must successfully participate in a proficiency testing program as defined in § 405.1310(c) covering all clinical laboratory and anatomical pathology specialties and subspecialties as made available in which the laboratory is approved to perform tests. Laboratories shall:

* * * * *

(2) Maintain records of all proficiency testing results in programs it uses to meet the requirement in the first sentence of paragraph (a) of this section. Records, including results and interpretations, must be available to the State agency. An exception to the requirements of this paragraph may be made if an appropriate, approved proficiency testing program is not readily available. Such exception shall continue until the State agency or the Secretary determines that such a program has been developed and is available.

3. Section 405.1315 is amended by revising paragraph (f) to simplify the standard and substitute a general sentence for the three specific factors, to read as follows:

§ 405.1315 Condition—clinical laboratory; technical personnel.

* * * * *

(f) *Standard: personnel policies.* There are written personnel policies that adequately support sound laboratory practice. Records are maintained to demonstrate that each employee is qualified for his or her position and assignments by means of training and experience, and that employees receive adequate health supervision.

4. In § 405.1316, paragraph (a) is removed, paragraphs (b), (c), (d), (e), (f), and (g) are redesignated as (a), (b), (c), (d), (e), and (f) respectively, and redesignated (e) and (f) are revised. As revised paragraphs (a) through (f) read as follows:

§ 405.1316 Condition—clinical laboratory; management.

* * * * *

(a) *Standard: laboratory management.* Space and facilities are adequate to properly perform the services which are performed in or offered by the laboratory. The factors explaining the standards are as follows:

(1) Workbench space is ample, well-lighted, and convenient to sink, water, gas, and suction and electrical outlets as necessary.

(2) Work areas are arranged so as to minimize problems in transportation and communication.

(3) The laboratory is properly ventilated.

(4) Volatile chemicals and inflammable solvents are properly stored in areas unlikely to ignite same or restricted from open flame or heat.

(5) Temperature and humidity are controlled within limits required for proper performance of tests and operation of instruments affected by these variations.

(6) Voltage levels at electrical sources to which automated equipment is connected are monitored and recorded.

(7) Adequate fire precautions and occupational safety and health laws are known, posted, and observed insuring that there is freedom from unnecessary physical, chemical, and biological hazards.

(b) *Standard; collection of specimens.* No persons other than a licensed physician, or one otherwise authorized by law, manipulates a patient for the collection of specimens except that qualified technical personnel of the laboratory may collect blood or remove stomach contents and collect material for smears and culture under the direction or upon the written request of a licensed physician.

(c) *Standard; sterilization.* Syringes, needles, lancets, or other blood-letting devices capable of transmitting infection from one person to another are not reused unless they are properly sterilized prior to each use and wrapped in a manner which will insure that they remain sterile until used. Appropriate sterilization and disinfection techniques are utilized, as required, for tests performed on potentially contaminated material and for the protection of laboratory personnel. Disposable syringes, needles, pipettes, Petri dishes, and other disposable items are appropriately discarded immediately after use. Each sterilizing cycle contains a device which indicates proper sterilization or an adequate recording thermometer is used and records kept of temperature readings. Proper operation of the autoclave is checked monthly with viable spores or appropriate indicators.

(d) *Standard; examination and reports.* The laboratory examines specimens only at the request of a licensed physician, dentist, or other person authorized by law to use the findings of laboratory examinations and reports only to those authorized by law to receive such results. The factors explaining the standard are as follows:

(1) If the patient is sent to the laboratory, a written request for the desired laboratory procedures is obtained from a person authorized by law to use findings of laboratory examination.

(2) If only a specimen is sent, it is accompanied by a written request.

(3) If the laboratory receives reference specimens from another laboratory, it reports back to the laboratory submitting the specimens.

(e) *Standard; specimens—records.* The laboratory maintains records containing the following information:

(1) The laboratory number or other identification of the specimen.

(2) The name and other identification of the person from which the specimen was taken.

(3) The name of the licensed physician or other authorized person or clinical laboratory which submitted the specimen.

(4) The date the specimen was collected by the physician or other authorized person.

(5) The date the specimen was received in the laboratory.

(6) The condition of unsatisfactory specimens when received (e.g., broken, leaked, hemolyzed, or turbid, etc.).

(7) The type of test performed.

(8) The date that test was performed.

(9) The results of the laboratory test or cross-reference to results and the date of reporting.

(10) The name and address of the laboratory to which forwarded if the procedure is not performed at this laboratory.

(f) *Standard; laboratory report and record.* The laboratory report is sent promptly to the licensed physician or other authorized person who requested the test and a suitable record of each test result is preserved by the laboratory for a period of at least 2 years after the date of submission of the report. The factors explaining the standard are as follows:

(1) The laboratory director is responsible for the laboratory report.

(2) Duplicate copies or a suitable record of laboratory reports are filed in the laboratory in a manner which permits ready identification and accessibility.

(3) Tissue pathology reports utilize acceptable terminology of a recognized system of disease nomenclature.

(4) The results of laboratory tests or procedures or transcripts thereof are not sent to the patient concerned except with the written consent of the physician or other authorized person who requested the test.

(5) Pertinent "normal" ranges as determined by the laboratory performing the tests are available to the physician requesting such tests.

(6) A list of analytical methods employed by the laboratory and a basis for the listed "normal" range is maintained in the laboratory. The list shall be made available to any physician ordering an examination upon request.

(7) If the laboratory refers specimens to another laboratory, the laboratory receiving the specimens meets the applicable conditions under the health insurance program. Each physician ordering an examination is notified that the specimen was referred to another laboratory. Such notice must show the name and address or other identification of the laboratory to which the specimen is referred. If the physician so requests, the referring laboratory may authorize the testing laboratory to report directly to the physician or other authorized person who requested the test, in which event the testing laboratory must send a duplicate of the report to the referring laboratory.

5. In secton 405.1317, the introductory language of paragraphs (a) and (b) is reprinted for reader comprehension, paragraph (a)(4) is revised to read as follows, paragraph (a)(5) is removed, paragraph (a)(6) is redesignated as (a)(5), and (b)(3) is reprinted without change for comment:

§ 405.1317 Condition—quality control.

(a) *Standard; general.* Quality controls imposed and practiced by the laboratory must provide for and assure:

* * * * *

(4) The availability at all times, in the immediate bench area of personnel engaged in examining specimens and performing related procedures within a category (e.g., clinical chemistry, hematology, and pathology), of current laboratory manuals or other complete written descriptions and instructions relating to (i) the current analytical methods used by personnel, (ii) reagents, (iii) control and calibration procedures, (iv) pertinent literature references, and (v) alternative methods for performing tests or storing the test specimens in the event that a test system becomes inoperable.

Procedures and changes in procedures are approved, signed and dated by the technical supervisor. Textbooks may be used as supplements to such written descriptions but may not be used in lieu thereof.

(5) Maintenance and availability to laboratory personnel and to the Secretary of records reflecting dates and, where appropriate, the nature of inspection, validation, remedial action, monitoring, evaluation, and changes and

dates of changes in laboratory procedures.

* * * * *

(b) *Standard; quality control system—methodologies.* Provision is made for an acceptable quality control program covering all types of analysis performed by the laboratory for verification and assessment of accuracy, measurement of precision, and detection of error. The factors explaining the standard are as follows:

* * * * *

(3) *Clinical chemistry.* (i) Each instrument or other device shall be recalibrated or rechecked at least once on each day of use. Records which document the routine precision of each method, automated or manual, and its recalibration schedule shall be maintained and be available to laboratory personnel and the Secretary. At least one standard and one reference sample (control) shall be included with each run of unknown specimens where such standards and reference samples are available. Control limits for standards and reference samples shall be recorded and displayed and shall include the course of action to be instituted when the results are outside the acceptable limits.

(ii) Screening or qualitative chemical urinalysis shall be checked daily by use of suitable reference samples.

C. Subpart Q is amended as follows:

Subpart Q—Conditions of Participation: Clinics, Rehabilitation Agencies, and Public Health Agencies as Providers of Outpatient Physical Therapy and/or Speech Pathology Services; and Conditions for Coverage: Outpatient Physical Therapy Services Furnished by Physical Therapists in Independent Practice

1. The authority citation for Subpart Q continues to read as follows:

Authority: Secs. 1102, 1861(p), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(p), 1395hh).

2. In § 405.1720, paragraph (b) is revised to remove the 6 numbered contract requirements, and to substitute a general statement, to read as follows:

§ 405.1720 Condition of participation—rehabilitation program.

* * * * *

(b) *Standard: Arrangements for social or vocational services.* If a rehabilitation agency does not provide social or vocational adjustment services through salaried employees, it may provide such adjustment services by means of a written contract with others who must meet the same requirements and responsibilities as salaried personnel as set forth in this subpart. The contract must specify the period of time the contract is to be in effect and the manner of termination or renewal, and provide for retention by the agency of responsibility for, and control and supervision of, the services.

3. In § 405.1721, the introductory text, and paragraph (a), introductory text, are republished, paragraphs (a)(1) through (a)(5) are removed, a new paragraph (a)(1) is added, paragraphs (a)(6), (a)(7), (a)(8) and (a)(9) are redesignated as (a)(2), (a)(3), (a)(4) and (a)(5) respectively, and redesignated (a)(5) is revised. As revised § 405.1721 reads as follows:

§ 405.1721 Condition of participation—arrangements for physical therapy and speech pathology services to be performed by other than salaried organization personnel.

When an organization provides outpatient physical therapy and/or speech pathology services under an arrangement with others, such services are to be furnished in accordance with the terms of a written contract, which provides for retention by the organization of professional and administrative responsibility for, and control and supervision of, such services.

(a) *Standard: Contract provisions.* The terms of the contract:

(1) Require that personnel furnishing services must meet the same requirements as salaried personnel as set forth in this subpart;

(2) Specify the financial arrangements which provide that the contracting outside resource may not bill the patient or the health insurance program for covered services, since pursuant to section 1861(w)(1) of the Act (42 U.S.C. 1395x(w)(1)), covered services furnished under arrangements must be billed through the provider exclusively and receipt of payment by the provider for such services on behalf of an entitled individual discharges the liability of such individual or any other person to pay for such services;

(3) Specify the period of time the contract is to be in effect and the manner of termination or renewal;

(4) Except as provided in paragraph (a)(5) of this section, provide that the services shall be performed in the patient's home, on the premises of the clinic, rehabilitation agency, or public health agency making the arrangements, or on the premises of an institution which meets the requirements of section 1861(e)(1) or section 1861(j)(1) of the Act; and

(5) In the case of a public health agency (including a public health agency which is certified by the health insurance program as a home health agency), may provide that physical therapy and/or speech pathology services may also be performed on the premises of the supplier of such services but only under the following circumstances:

(i) The public health agency does not have the capacity to provide on its premises all of the:

(A) Modalities of treatment, tests, and measurements as specified in § 405.1718(a) (in the case of outpatient physical therapy services), or

(B) Diagnostic and treatment services as specified in § 405.1719(a) (in the case of outpatient speech pathology services);

(ii) The services provided on the premises of the supplier include those as defined in § 405.1718(a) or § 405.1719(a), as appropriate, which the public health agency cannot provide on its premises, and these services are not provided on an outpatient basis in another accessible participating provider of services;

(iii) Services are provided on the premises of the supplier only in those instances in which the patient's treatment requires the use of modality or regimen which is not available on the premises of the public health agency;

(iv) The public health agency is responsible for advising the State agency of the name of each supplier with whom it contracts for the provision of services and makes the arrangements necessary in order for the State agency to survey the premises and organization of each supplier of services to determine compliance with applicable regulations; and

(v) A physician, or, as appropriate to the nature of the cases under review, a podiatrist, qualified physical therapist, qualified speech pathologist, or supervising nurse employed by the public health agency reviews at least every 2 weeks all records of the patients of the public health agency who have been treated on the premises of the supplier.

4. Section 405.1722 is reprinted without change, for comment:

§ 405.1722 Condition of participation—clinical records.

The organization maintains clinical records on all patients in accordance with accepted professional standards, and practices. The clinical records are completely and accurately documented, readily accessible, and systematically

organized to facilitate retrieving and compiling information.

(a) *Standard: Protection of clinical record information.* The organization recognizes the confidentiality of clinical record information and provides safeguards against loss, destruction, or unauthorized use. Written procedures govern the use and removal of records and the conditions for release of information. The patient's written consent is required for release of information not authorized by law.

(b) *Standard: Content.* The clinical record contains sufficient information to identify the patient clearly, to justify the diagnosis(es) and treatment, and to document the results accurately. All clinical records contain the following general categories of data:

(1) Documented evidence of the assessment of the needs of the patient, of an appropriate plan of care, and of the care and services provided,

(2) Identification data and consent forms,

(3) Medical history,

(4) Report of physical examinations, if any,

(5) Observations and progress notes,

(6) Reports of treatments and clinical findings, and

(7) Discharge summary including final diagnosis(es) and prognosis.

(c) *Standard: Completion of records and centralization of reports.* Current clinical records and those of discharged patients are completed promptly. All clinical information pertaining to a patient is centralized in the patient's clinical record. Each physician's entries into the clinical record are signed by the appropriate physician.

(d) *Standard: Retention and preservation.* Clinical records are retained for a period of time not less than:

(1) That determined by the respective State statute, or the statute of limitations in the State, or

(2) In the absence of a State statute:

(i) Five years after the date of discharge, or

(ii) In the case of a minor, 3 years after the patient becomes of age under State law or 5 years after the date of discharge, whichever is longer.

(e) *Standard: Indexes.* Clinical records are indexed at least according to name of patient to facilitate acquisition of statistical medical information and retrieval of records for research or administrative action.

(f) *Standard: Location and facilities.* The organization maintains adequate facilities and equipment, conveniently located, to provide efficient processing of clinical records (reviewing, indexing, filing, and prompt retrieval).

5. Section 405. 1736(b) and (d) are reprinted without change for comment:

§ 405. 1736 Condition for coverage-clinical records.

* * * * *

(b) *Standard: Content.* The clinical record contains sufficient information to identify the patient clearly, to justify the diagnosis(es) and treatment, and to document the results accurately. All clinical records contain the following general categories of data:

(1) Documented evidence of the assessment of the needs of the patient, of an appropriate plan of care, and of the care and sevices provided,

(2) Identification data and consent forms,

(3) Medical history,

(4) Report of physical examination(s), if any,

(5) Observations and progress notes,

(6) Reports of treatments and clinical findings, and

(7) Discharge summary including final diagnosis(es) and prognosis.

* * * * *

(d) *Standard: Retention and preservation.* Clinical records are retained for a period of time not less than:

(1) That determined by the respective State statute or the statute of limitations in the State, or

(2) In the absence of a State statute:

(i) 5 years after the date of discharge or, (ii) in the case of a minor, 3 years after the patient becomes of age under State law, or 5 years after the date of discharge, whichever is longer.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance Program; No. 13.714, Medical Assistance)

Dated: May 19, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: July 14, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-29173 Filed 12-30-86; 8:45am]

BILLING CODE 4120-01-M

Notices

Federal Register
Vol. 51, No. 250
Wednesday, December 31, 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

Rural Electrification Administration

Pedernales Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), AND REA Environmental Policy and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of a 138 kV transmission line and substation upgrades in Comal County, Texas, by Pedernales Electric Cooperative, Inc. (Pedernales).

FOR FURTHER INFORMATION CONTACT: REA's FONSI and Environmental Assessment (EA) and Pedernales' Borrower's Environmental Report (BER) may be reviewed at the office of the Director, Southwest Area—Electric, Room 0207, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, Telephone (202) 328–8848, or at the office of Pedernales Electric Cooperative, Inc., (Bennie R. Fuelburg, Manager), P.O. Box 467, Johnson City, Texas 78636, Telephone (512) 868–7155, during regular business hours.

Copies of the EA and FONSI can be obtained from either of the contacts listed above. Any comments or questions should be directed to the REA contact.

SUPPLEMENTARY INFORMATION: REA, in conjunction with a request for construction approval from Pedernales, has reviewed the BER submitted by Pedernales and has determined that it represents an accurate assessment of the environmental impacts of the proposed project. The project consists of constructing 52.8 km (32.8 mi) of 138 kV transmission line within a 30 meter (100 ft) right-of-way (ROW). Approximately 19.3 km (12 mi) of 138 kV line will be constructed between Bergheim and Devil's Hill along a new ROW. The remainder of the project, Devil's Hill to Crane's Mill 16.5 km (10.25 mi) and Crane's Mill to Sattler 16.9 km (10.5) will involve the removal of an existing 69 kV transmission line which would be replaced by a 138 kV line that would utilize the same ROW to the extent possible.

REA determined that the proposed project will have no effect on wetlands, primeforestland or rangeland, threatened and endangered species or critical habitat, and any property listed or eligible for listing in the National Register of Historic Places. The floodplains of streams and areas defined as prime farmland are located in both the preferred and alternate corridors. A maximum of 10 structures would be located within the 100-year floodplain of the streams located within either the preferred or alternate corridor. Approximately 0.02 ha (0.06 ac) of prime farmland would be impacted by the project regardless of the corridor selected. The only land removed from crop production would be immediately adjacent to the line support structures. There is no alternative action that would satisfy the need for the project which would avoid or reduce the small amount of prime farmland that would be impacted or that avoids the placement of structures within the 100-year floodplain. No other matters of potential environmental concern have been identified.

Alternatives examined for the proposed project included no action, double circuiting the existing 69 kV system, repalacement of the existing system in the project area with 138 kV lines and alternative line routes. REA determined that the construction of a new 138 kV line between Bergheim and Devil's Hill and the replacement of existing 69 kV lines with 138 kV lines between Devil's Hill and Sattler is an environmentally acceptable alternative for Pedernales to maintain adequate service to present customers and to serve a substantial regional load growth.

Based upon the BER, REA prepared an EA concerning the proposed project and its impacts. REA has independently evaluated the proposed project and has concluded that project approval would not constitute a major Federal action significantly affecting the quality of the human environment. Consequently, no environmental impact statement is necessary.

In accordance with REA Environmental Policy and Procedures (7 CFR Part 1794) Pedernales advertised and requested comments on the environmental aspects of the proposed project in local newspapers. There were no comments.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related notice to 7 CFR Part 3015 Subpart V., this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: December 19, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86–29318 Filed 12–30–86; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export Trade Certificates of Review. A

certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than January 20, 1987 to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 86–00009."

Applicant: American Wood Chip Export Association, 900 SW. Fifth Avenue, 23rd Floor, Portland, Oregon 97204. Contact: David P. Miller, Secretary/Treasurer, Telephone: 503/294–9202.

Application #: 86–00009.

Date Deemed Submitted: December 15, 1986.

Members (in addition to applicant): Sun Studs, Inc. and RLC Fibre Co., Inc. of Roseburg, Oregon; Medford Corporation, Medford, Oregon; Bohemia, Inc., Eugene, Oregon; and North Coast Export Cooperative, Eureka, California.

Summary of the Application

A. Export Trade and Export Markets

The American Wood Chip Export Association ("AWCEA") intends to export wood chips, sawdust, shavings, and other wood fibers (other than pulp) on a worldwide basis.

B. Export Trade Activities and Methods of Operation

AWCEA seeks certification for the following export-related activities:

1. Members may discuss supply and demand for chips in export trade, including availability of chips for export, anticipated export prices and volumes desired by export customers.

2. Members may discuss and/or agree upon terms of export sales of the products to foreign buyers.

3. Members may discuss and/or agree upon export prices to be charged by members for the product in sales to foreign buyers.

4. Members may discuss domestic supply and demand for the products in the Pacific Northwest region. There will be no discussion of specific prices or volumes involved in domestic transactions by members, but such information can be furnished by members on a confidential basis to the secretary of the organization who will compute averages and trends regarding domestic prices and volumes for disclosure to members.

5. The association may limit membership to companies which export the products described above.

6. The association may exclude from its membership companies which are owned, controlled by, or affiliated with, foreign individuals, or corporations or governments.

Dated: December 23, 1986.

George Muller,

Deputy Director, Office of Export Trading Company Affairs.

[FR Doc. 86–29300 Filed 12–30–86; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

1985 Survey of Strip Bass Fisheries

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

ACTION: Notice of survey results.

SUMMARY: NOAA publishes the results of a survey of Atlantic coast striped bass fisheries for 1985. The report of survey results is required under the Atlantic Striped Bass Conservation Act. The intended effect is to provide information on the status of the striped bass fisheries.

ADDRESS: Copies of the survey results are available from David G. Deuel, NOAA/NMFS, 1825 Connecticut Avenue, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, 202–673–5359.

SUPPLEMENTARY INFORMATION:

Comprehensive Annual Survey Of The Atlantic Striped Bass Fisheries—Calendar Year 1985

Section 6 of the Atlantic Strip Bass Conservation Act (Pub. L. 98–613, 16 U.S.C. 1851) required the Secretary of Commerce and the Secretary of the Interior to conduct a comprehensive annual survey of the Atlantic striped bass fisheries. Each survey was to include, but not be limited to, a compilation and assessment of the recreational and commercial landings of striped bass in the coastal States during the period considered in the survey. The results of each annual survey were to be published in the Federal Register. This report presents data for calendar year 1985 as required by section 6 of the Atlantic Striped Bass Conservation Act (The Act).

The Act was signed into law on October 31, 1984. Under the Act, no funds were authorized for appropriation for activities in Fiscal Year 1985. For Fiscal Year 1986, funds were authorized but not appropriated. Thus, for calendar year 1985, no funds were appropriated for conduct of the comprehensive annual survey and no separate surveys were conducted on the Atlantic striped bass fisheries. However, the National Marine Fisheries Service of the U.S. Department of Commerce routinely collects data on all U.S. commercial fisheries and on marine recreational fishing on the Atlantic, Gulf, and Pacific coasts. Data from these surveys are used in this report to satisfy the requirements of Section 6 of the Act.

A description of the statistical survey procedures for the commercial landings may be found in "Fishery Statistics of the United States 1977" (U.S. Department of Commerce, 1984), and for the recreational fishery data in "Marine Recreational Fishery Statistics Survey, Atlantic and Gulf Coasts, 1983–1984" (U.S. Department of Commerce, 1985). The Act addresses striped bass from Maine through North Carolina; the data presented below are for the same area.

Commercial landings of striped bass in 1985 were 1.2 million pounds, the lowest on record, and 1.7 million pounds less than the 1984 landings. Part of the decline since 1982 has resulted from restrictive regulations on the commercial fishery. Maximum landings of 14.7 million pounds were recorded in 1973, and since then landings have steadily declined. Average landings for the 20 year period from 1966 to 1985 were 7.2 million pounds. However, from 1966 to 1975, landings averaged 10.7 million pounds, while from 1976 to 1985, landings averaged only 3.7 million pounds. For the last 5 years, an average of 2.5 million pounds were landed. Commercial landings by State from 1979 through 1985 are shown in Table 1. Figure 1 shows annual commercial landings from 1961 through 1985.

Estimates of catch and harvest of striped bass by recreational fishermen are available from the marine recreational fishery statistics surveys from 1979 through 1985. Catch is defined as the total number of fish caught,

including those released alive. Harvest is the number of fish which are removed from the population. Estimated weights are available for the fish harvested. The reliability of the survey estimates is greater for species which occur more frequently in the catch than for those which occur infrequently in the catch. In recent years, with the striped bass stocks at low levels, the estimates for striped bass are less reliable than those for other species such as bluefish, winter flounder, or scup, which occur frequently in the catch. In addition, there is high variability of striped bass catch estimates by State from year to year. Although a separate survey of the recreational fishery for striped bass would likely provide more reliable estimates of the catch and harvest of striped bass, such a survey would be extremely expensive to conduct because of the low abundance of striped bass.

In 1985, recreational fishermen caught an estimated 618,000 striped bass, of which 198,000 were harvested. The remaining 420,000 were released alive. The total recreational catch of striped bass has declined from about 2.0 million fish in 1979 to about 600,000 fish in 1983–1985. As with the commercial fishery, restrictions on the recreational fishery contributed to part of the decrease in catch. The number of striped bass harvested has also declined, from about 1.3 million fish in 1979 to about 200,000 in 1982–1985. The estimated weight of the 1985 striped bass recreational harvest was 1.7 million pounds. Table 2 presents estimates of the total recreational catch of striped bass by State from 1979 through 1985.

The management measures imposed on striped bass fishing by the coastal States, as recommended by the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for the Striped Bass (as amended), have had a significant impact on the recreational harvest and the commercial landings. Most new management regulations were put in place between 1982 and 1985, with those having the most impact being implemented during 1984 and 1985. These regulations include closed seasons, closed areas, size limits, commercial gear restrictions and bag limits on the recreational fishery. Most significantly, a moratorium was imposed on striped bass fishing in Maryland and Delaware in January 1985.

Appropriate data on striped bass to calculate estimates of the population size have not been collected. Prior to 1982, striped bass commercial landings data were used as an indicator of the stock size. The commercial fishery has since been severely restricted by regulations, thus landings in recent years are not comparable to those in earlier years nor are they indicative of trends in stock size. Thus, caution should be used in interpreting the landings data in recent years. The recreationa fishery for striped bass has been similarly impacted by management regulations.

There have been additional management restrictions placed on the striped bass fisheries from Maine through North Carolina during 1986 in response to a recent amendment to the Commission's Interstate Fishery Management Plan for the Striped Bass. Changes in regulations based on the amendment and other restrictions, such as closures due to high levels of PCB's, will result in landings data being of little or no use as an indicator of the condition of the striped bass stocks.

Dated: December 23, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

TABLE 1. REPORTED COMMERCIAL LANDINGS (THOUSANDS OF POUNDS) [1] OF STRIPED BASS IN ATLANTIC COASTAL STATES, 1979–1985

State	1979	1980	1981	1982	1983	1984	1985
Maine	**	**	1	.....	.....	.....	1
New Hampshire	.....	.....	.....	.....	.....	.....	.....
Massachusetts	695	886	708	643	224	107	119
Rhode Island	54	20	235	270	196	54	61
Connecticut	45	29	5	6	2	2	6
New York	570	598	822	471	310	595	469
New Jersey	40	24	14	10	20	9	12
Delaware	26	17	23	26	7	37	.....
Maryland	947	2,101	1,641	518	446	1,108	43
Virginia	467	503	395	147	151	508	241
North Carolina	614	473	417	338	361	513	280
Total	3,458	4,651	4,261	2,429	1,717	2,933	1,232

[1] Source: National Fisheries Service, F/S21, unpublished data.
NOTE: Dash denotes none reported; ** denotes less than 500 pounds.

TABLE 2. Estimated Total Recreational Catch (Thousands of Fish) of striped bass by state, Maine to North Carolina, 1979–1985.[1]

State	1979	1980	1981	1982	1983	1984	1985
Maine	(–)	(–)	(–)	(–)	(–)	(–)	177
New Hampshire	(0)	(0)	(–)	(0)	(–)	(0)	(–)
Massachusetts	66	(–)	(–)	129	68	132	123
Rhode Island	31	(–)	(–)	(–)	(–)	72	50
Connecticut	81	42	(–)	555	45	41	41
New York	733	59	37	(–)	36	101	95
New Jersey	(–)	(–)	40	151	210	84	(–)
Delaware	(–)	(0)	(0)	(0)	(–)	(–)	(–)
Maryland	1,005	377	174	40	155	148	102

TABLE 2. Estimated Total Recreational Catch (Thousands of Fish) of striped bass by state, Maine to North Carolina, 1979–1985.[1]—Continued

State	1979	1980	1981	1982	1983	1984	1985
Virginia	(–)	(0)	(0)	(0)	(–)	(–)	(–)
North Carolina	57	(–)	576	(0)	(–)	(–)	(–)
Total	2,005	548	892	911	568	626	618

Estimates include both fish harvested and those released.
(–) = Less than 30,000 reported.
(0) = None reported.
[1] Sources: 1979–1980: USDOC, 1984 Current Fishery Statistics No. 8322. 1981–1982: USDOC, 1985 Current Fishery Statistics No. 8324. 1983–1984: USDOC, 1985 Current Fishery Statistics No. 8326. 1985: USDOC, 1985 Current Fishery Statistics No. 8327.

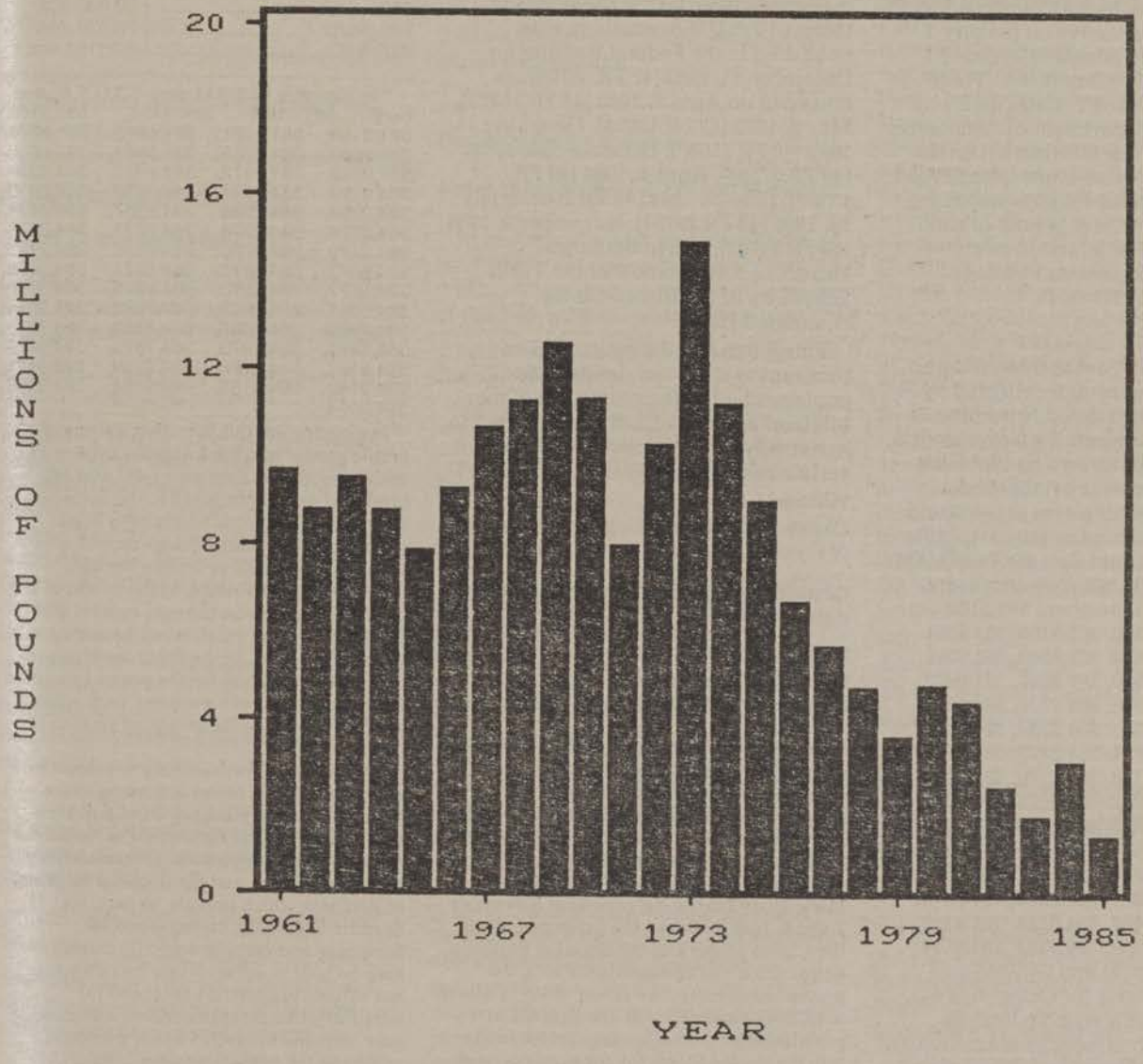


Figure 1. Reported commercial landings of striped bass along the Atlantic Coast, 1961-1985.

[FR Doc. 86-29279 Filed 12-30-86; 8:45 am]
BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Limits for Certain Wool and Man-Made Fiber Textile Products From the Socialist Republic of Romania; Effective January 1, 1987

December 23, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

The Bilateral Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated November 7 and 16, 1984, between the Governments of the United States and the Socialist Republic of Romania established a group limit for Categories 431–459 and 630–659, and within the group, specific limits for individual Categories 433/434, 435/444, 443, 635, 638/639, 643/644pt. (only T.S.U.S.A. numbers 381.3162, 381.3164, 381.3166, 381.3168, 381.3561, 381.6976, 381.8670, 381.9560, 381.9562, 381.9564, 381.9566, 381.9568, 381.9972, 384.2327, 384.2328, 384.2329, 384.2331, 384.2332, 384.2333, 384.2334, 384.2336, 384.2337, 384.2774, 384.2775, 384.2776, 384.2777, 384.2778, 384.2779, 384.2780, 384.2781, 384.2782, 384.5673, 384.5674, 384.5675, 384.5677, 384.5678, 384.5679, 384.5680, 384.5681, 384.5683, 384.7863, 384.7865, 384.7866, 384.7867, 384.7869, 384.7870, 384.7871, 384.7873, 384.7875, 384.9156, 384.9157, 384.9158, 384.9159, 384.9161, 384.9162, 384.9163, 384.9164, 384.9166, 384.9674) and 645/646 and consultation levels for Categories 442, 448 and 640 and a specific limit for Category 604, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987. The agreement also provides consultation levels for categories which are not subject to specific limits and which may be adjusted during the year. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for cosumption and withdrawal from warehouse for consumption, of wool and man-made fiber textile products in the foregoing categories, exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987, in excess of the designated limits.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1986.

Commissioner of Customs
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as furthr extended on July 31, 1986; pursuant to the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 6, 1984, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the following restraint limits:

Category	12-Mo restraint limit
Group III-Apparel	
431–459 and 630–659	42,020,449 yd [2] equivalent.
433/434	278,181yd [2] equivalent.
435/444	7,545 doz.
443	8,022 doz.
442	5,556 doz.
448	5,556 doz.
604	3,219,546 lb.
635	56,364 doz.
638/639	4,917,881 yd [2] equivalent.
640	50,000 doz.
643/644pt. [1]	36,823 doz.
645/646	227,130 doz.

[1] In category 643/644 only T.S.U.S.A. numbers 381.3162, 381.3164, 381.3166, 381.3168, 381.3561, 381.6976, 381.8670, 381.9560, 381.9562, 381.9564, 381.9566, 381.9568, 381.9972, 384.2327, 384.2328, 384.2329, 384.2331, 384.2332, 384.2333, 384.2334, 384.2336, 384.2337, 384.2774, 384.2775, 384.2776, 384.2777, 384.2778, 384.2779, 384.2780, 384.2781, 384.2782, 384.5673, 384.5673, 384.5674, 384.5675, 384.5677, 384.5678, 384.5679, 384.5680, 384.5681, 384.5683, 384.7863, 384.7865, 384.7866, 384.7867, 384.7869, 384.7870, 384.7871, 384.7875, 384.9156, 384.9157, 384.9158, 384.9159, 384.9161, 384.9162, 384.9163, 384.9164, 384.9166, 384.9674.

In carrying out this directive, entries of textile products in the foregoing categories, with exception of Categories 442 and 448, produced or manufactured in the Socialist Republic of Romania, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period. In the event the levels of restraint established for the period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels set forth above are subject to adjustment in the future according to the provisions of the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984 between the Governments of the United States and the Socialist Republic of Romania which provide, in part, that: (1) Specific limits may be increased for carryover and carryforward; (2) consultations may be held to adjust levels for categories not subject to specific limits; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustment under the bilateral agreement, referred to above, will be made to you by letter.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR

15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consomption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements had determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-29332 Filed 12-30-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on B-1B Defensive Avionics; Date Change; Advisory Committee Meeting

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on B-1B Defensive Avionics scheduled for January 13, 1987 as published in the **Federal Register** (Vol. 51, No. 230, Page 43236, Monday, December 1, 1986, FR Doc. 86-26880) will be held on January 20, 1987.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 24, 1986.

[FR Doc. 86-29339 Filed 12-30-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Strategic Air Defense R&D; Advisory Committee Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Strategic Air Defense R&D will meet in closed session on February 5-6, 1987 at the Naval Ocean Systems Center, San Diego, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will investigate the feasibility of defense against cruise missiles and their delivery platforms.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 23, 1986.

[FR Doc. 86-20340 Filed 12-30-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 15-16 January 1987.

Times of meeting: 0830 hours, 15 January 1987; 1300 hours, 16, January 1987.

Places: Pentagon, Wash, D.C., Room 2E715B.

Agenda: The Army Science Board for the Human Engineering Laboratory Effectiveness Review will meet at the Pentagon for the purpose of interacting with members of the DCSRDA and DCSPER staffs and representatives of Human Engineering Laboratory user community. These interactions will afford the ASB panel the opportunity to gather additional data in the conduct of the HEL Effectiveness Review. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at, (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-29503 Filed 12-30-86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thurs and Fri, 15-16 January 1987.

Times of meeting: 0800-1630 hours each day.

Place: Pentagon, Wash, DC, DCSOPS Conference Room 3E635.

Agenda: The proposal for the Army Science Board 1987 Summer Study on Force Cost Drivers is to determine if Army environmental specifications e.g. mechanical, natural, and battlefield, and their application to equipment and systems are valid in view of the costs. EMP, nuclear hardening, tempest and NBC contamination survivability are specifications of particular interest. This initial meeting will review the study terms of reference, receive selected classified and unclassified briefings and meet in executive session to determine study methodology and programmatics. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-29504 Filed 12-30-86; 8:45 am]

BILLING CODE 3710-08-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

December 23, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Software Expertise will meet at the Pentagon, Washington DC, on January 22-23, 1987 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review, discuss and evaluate the effectiveness of software expertise being developed by the Air Force.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–29298 Filed 12–30–86; 8:45 am]

BILLING CODE 3910–01–M

Air Force Activities for Conversion to Contract

ACTION: Notice.

The Air Force recently determined that Transient Aircraft Maintenance, Hurlburt Field, FL, will be examined for conversion to contract.

FOR FURTHER INFORMATION CONTACT: Mr. Noble Loucks, HQ MAC/XPMRS, Scott AFB, IL, telephone (618) 256–4105.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–29304 Filed 12–30–86; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Indian Education Act—Part A—Formula Grant Program; Fiscal Year 1987; Amendment of Notice; Applications

AGENCY: Department of Education.

ACTION: Notice of amendment to notice for transmittal of new applications for fiscal year 1987 under the Indian Education Act—Part A—Formula Grant Program (CFDA No. 84.060A).

SUMMARY: This notice amends the fiscal year 1987 notice inviting applications for new awards under the Indian Education Act—Part A—Formula Grant Program, published in the **Federal Register** on September 17, 1986 (51 FR 33005), to notify potential applicants that the statute authorizing this program has been amended specifically to include a new activity allowable under this program. The deadline for transmittal of these applications remains the same as under the original notice (February 13, 1987).

SUPPLEMENTARY INFORMATION: Section 4133 of the Drug-Free Schools and Communities Act of 1986 (Subtitle B of Title IV of Pub. L. 99–570), enacted October 27, 1986, amended section 304 of the Indian Education Act by adding a new paragraph (3) which permits the use of funds for "the training of counselors at schools eligible for funding under this title in counseling techniques relevant to the treatment of alcohol and substance abuse."

A technical amendment to the program regulations incorporating the changes made by this legislation will be published in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Julie Lesceux, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC 20202. Telephone: (202) 245–7881.

Program Authority: 20 U.S.C. 241aa–241ff.

Dated: December 23, 1986.

Lawrence F. Davenport,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 86–29351 Filed 12–20–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Shell Oil Company

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of execution of proposed consent order with Shell Oil Company and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) announces a proposed Consent Order, reproduced below, between the Department of Energy (DOE) and Shell Oil Company (Shell). The agreement proposes to resolve all remaining issues relating to Shell's compliance with the federal petroleum price and allocation regulations for the period January 1, 1973 through January 27, 1981. If this Consent Order is approved, Shell will pay $180 million, plus interest from the date the Consent Order was executed until paid, to the DOE. ERA will then petition the DOE Office of Hearings and Appeals (OHA) to implement a Special Refund Proceeding pursuant to 10 CFR Part 205, Subpart V, where any person who claims to have suffered injury from Shell's alleged overcharges would have the opportunity to submit a claim. Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. Following this comment period, ERA will conduct a public hearing to provide interested persons an additional opportunity to present comments. ERA will consider the submissions received from the public in determining whether to reject the settlement, accept the settlement and issue a final Consent Order, or renegotiate the agreement. DOE's final decision will be published in the **Federal Register**, along with an analysis of significant written and oral comments, as well as any other considerations that were relevant to the decision.

FOR FURTHER INFORMATION CONTACT: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, Department of Energy (RG–44), Washington, DC 20585, Telephone: 202–252–4387.

Copies of the Consent Order may be received free of charge by writing to the address above, or may be obtained at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Room 1E–190, Washington, DC.

SUPPLEMENTARY INFORMATION:

I. Background
II. Resolution of Regulatory Issues
  A. Crude Oil Issues
  B. Refiner Pricing Issues
  C. Natural Gas Liquids Issues
  D. Effect of Allegations
III. Basis for Settlement
  A. Crude Oil Allegations
  B. Refiner Pricing Issues
IV. Terms and Conditions of the Consent Order

I. Background

Shell is a major petroleum refiner subject to the audit jurisdiction of ERA to determine compliance with the federal petroleum price and allocation regulations. During the period covered by the proposed Consent Order (January 1, 1973 through January 27, 1981), Shell engaged in, among other things, the production, importation, refining, and sale of crude oil; the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane and other refined petroleum products; and the extraction, fractionation and sale of natural gas liquids (NGLs) and natural gas liquid products (NGLPs).

ERA conducted an intensified audit of Shell's compliance for the period beginning in 1973 to the date when federal price and allocation controls were ended by the President (January 28, 1981, Executive Order 12287, 46 FR 9909 January 30, 1981). During this audit, ERA identified areas in the pricing and sales of crude oil and refined petroleum products in which it believes that Shell had failed to comply with the requirements of the federal price and allocation regulations. ERA has initiated enforcement actions against Shell both administratively and in the courts. There are currently eight enforcement matters in litigation, including one crude oil Proposed Remedial Order (PRO), seven refiner pricing issues, as well as an NGL

matter which would be the subject of a PRO if, for any reason, the Consent Order is not adopted as a final order.

ERA has engaged in negotiations with Shell over a period of years before reaching the settlement described here. The terms of this settlement, which has been approved within the Department of Energy, require Shell to pay $180 million for distribution by DOE. The portion reflecting resolution of crude oil issues is subject to DOE's modified restitutionary policy for crude oil cases, as described below.

For the reasons stated below, DOE believes the proposed Consent Order represents a fair settlement of the matters at issue, a reasonable resolution of the enforcement actions, and an appropriate remedy for the alleged violations.

II. Resolution of Regulatory Issues

There are nine enforcement actions to be resolved with Shell: One crude oil PRO; five refiner pricing PROs; two refiner pricing Remedial Orders (ROs); and a yet to be issued PRO concerning NGLs. These actions are described below.

A. Crude Oil Issues

ERA issued a PRO to Shell on November 9, 1984, alleging violations of the regulations governing the first sale of crude oil in the amount of $78.7 million, plus interest, for the period September 1973 through May 1979. ERA alleged that these errors continued throughout the period of controls and would be found on unaudited properties as well. The issues in the PRO primarily concern Shell's designation of "properties", plus posted price and other computational errors. Shell asserts a number of factual and legal errors in the PRO and that it has made refunds with regard to some of the allegations. ERA believes that the maximum liability that could be found is $96.7 million, with interest, $281 million. This matter is Pending in OHA in case number HRO–0271.

B. Refiner pricing Issues

1. Fee Free License Valuation/ Crude Oil Costs. OHA issued an RO to Shell on April 10, 1986, *Shell Oil Company*, 14 DOE ¶ 83,015 (1986), in which it found that Shell's attribution of a value to fee free licenses transferred from an affiliate was improper and that Shell's methodology for calculating crude oil costs was inconsistent with the regulations. As a result, Shell had claimed $11.7 million in excess costs.

2. Olefin Plant Nonproduct Costs. Shell claimed nonproduct costs associated with the construction of an olefin plant at its Norco complex. OHA issued an RO on this issue in 1984, *Shell Oil Company*, 12 DOE ¶ 83,024, finding that $40.7 million in costs were improperly claimed.

3. Retroactive Reallocation Of Costs. ERA alleged that Shell improperly refiled to reallocate costs between product categories after the period permitted by regulation. The PRO did not specify the amount of costs shifted between product categories. This matter is pending in case number HRO–0277.

4. Nonproduct Costs. ERA conducted an audit of the nonproduct costs claimed by Shell and challenged the calculation of costs claimed for a number of categories, alleging an overstatement of $158 million. This matter is pending in case number HRO–0278.

5. Jet Fuel May 15 Prices. ERA alleges that Shell improperly designated the classes of purchaser of jet fuel and, as a result, chose incorrect May 15, 1973 prices for the classes. The PRO did not allege an amount of violation. The audit was conducted on a sampling basis. If the PRO were to be affirmed by OHA, a determination of Shell's liability would be required. With Shell's assistance, ERA has computed an estimated recovery for this case. This matter is pending in case number HRO–0279.

6. May 15 Prices— Other Products. ERA alleges that Shell imputed the May 15 price for a number of products and classes of purchasers, rather than determine the actual May 15, 1973 price for each class. The PRO did not allege an amount of violation. As with the Jet Fuel case, the audit was based on a sample of Shell's prices, and, if successful, ERA would have to determine the amount of violation. For the purposes of negotiation, Shell and DOE estimated an amount of recovery for this case. This matter is pending in case number HRO–0280.

7. Retail Price Equalization. ERA alleges that Shell failed to compute its recoveries of costs for retail gasoline sales correctly in that Shell did not deem recoveries in retail sales at the highest cost increase increment charged. The PRO alleges an underrecovery of $12 million in costs. This matter is pending in case number HRO–0281.

C. Natural Gas Liquids Issues

ERA has not issued a PRO regarding NGLs. In its audit, ERA has identified a number of errors in Shell's calculation of NGL costs, including its use of transfer prices and in the calculation of shrinkage based on market prices of NGLs rather than actual prices in Shell transactions. The amounts attributable to these issues were included in the assessment of recovery from Shell.

D. Effect Of Allegations

1. Crude Oil Allegations. ERA alleges that Shell's alleged crude oil violations should result in a refund of the amount of the alleged overcharges, rather than a determination of the effect such pricing would have had on the prices of Shell's refined products.

2. Refiner Pricing and NGL Allegations. With regard to the two May 15 Price cases, B.5 and 6 above, ERA alleged in the PROs that any amount determined to be a violation results in an overcharge to be refunded to customers. In subsequent litigation in other cases, it has become apparent that neither OHA nor the Federal Energy Regulatory Commission are likely to uphold this position. As a result, ERA has analyzed all the refiner issues as cost or recovery adjustment matters. In addition, the NGL issues also result in an adjustment to Shell's claimed costs.

The premise of the Refiner Price Rule is that the maximum price that could be charged is limited to the price charged on May 15, 1973 plus increased costs incurred since May 1973. Thus, the determination of the May 15 price, and the calculation of increased costs, both of which are at issue here, is central to the regulations. In addition, refiners were allowed to carry over, or "bank", those increased costs not used to justify prices in a particular month. In other words, if a refiner charged less than its maximum allowable price, it could increase its price in later months. The nature of the costs that could be claimed, the manner of their calculation, the ability to reallocate costs among products, the computation of recoveries of costs, and the restrictions on the carry over and use of banks were all governed by the regulations. At the end of price controls in 1981, Shell had aggregated almost $700 million in banks.

ERA calculated the total of the adjustments to be made to Shell's reported costs and recoveries for the period of controls based on the allegations discussed above. Including NGL issues and the estimates discussed above, the total of the adjustments is $490 million. However, some of these adjustments are allocable to decontrolled products. Prior to making these adjustments, ERA computed an overrecovery of costs of $6 million. When the adjustments were made, an additional $22.8 million of overrecoveries occurred, for a total of $28.8 million, all attributable to the calculation of prices of gasoline. With interest, the total allegation against Shell for refiner pricing and NGL issues is $78.7 million.

II. Basis For Settlement

A. Crude Oil Allegations

The crude oil issues include both the allegations made with regard to audited properties but also include projections and extrapolations to unaudited properties. In the litigation and in the negotiations, Shell has maintained that ERA's estimate of overcharges on unaudited properties is overstated. Shell has supplied information in support of their position that minimal overcharges would be found on the unaudited properties and that ERA's extrapolations should be rejected. In addition, Shell maintains that it has made refunds with regard to some of the allegations, and that the amount in controversy should be reduced by the amount of the refunds. Based on the information exchanged in negotiations, ERA has reevaluated its likelihood of recovery on these issues. Furthermore, ERA has assessed the litigation risk in prevailing on every element of the crude oil PRO, including the interest component. As a result of these considerations, ERA has determined that a $160 million recovery on those issues is satisfactory.

B. Refiner Pricing Issues.

In determining a reasonable settlement amount for the allegations of regulatory violations concerning refined products discussed above, ERA reviewed its maximum overcharge and interest determination of $78.7 million. This amount, which is based on audit samples, estimates, projections and extrapolations, represents the estimated maximum recovery, including interest, that could result if all regulatory issues resolved by this settlement were adjudicated in ERA's favor and Shell's maximum allowable prices calculated on the basis of the effect of those issues. As noted above, the $28.8 million in overrecoveries occurred entirely in gasoline, and is the result of $490 million in cost and recovery adjustments.

The inherent risks in litigation make recovery of the entire amount problematic. The government must prevail on all of the issues in order to achieve the maximum overcharge recovery. Each of the eight cases discussed above in turn contains. subissues and each subissue presents factual and legal questions on which ERA must prevail to require the adjustment to Shell's costs or recoveries identified above. The failure to prevail fully on any issue that effects the calculation of Shell's gasoline prices renders the probability of recovering the entire $28.8 million in refinery pricing overrecoveries less likely. As a result, ERA believes that a recovery of $20 million for the alleged violations is satisfactory.

IV. Terms and Conditions of the Consent Order

Within thirty days of the effective date of the Consent Order, Shell will pay the principal amount of $180 million, plus interest from the date of execution until paid, to DOE. ERA will petition OHA to implement a Special Refund Proceeding under the provisions of 10 CFR Part 205, Subpart V. In the Proceeding, OHA will develop procedures for the receipt and evaluation of applications for refund in order to distribute the refund amount. To ensure that OHA has sufficient information to evaluate the claims, the proposed Consent Order requires that Shell make necessary information available to OHA.

That portion of the refund amount attributable to crude oil issues, as explained above, is subject to the Statement of Modified Restitutionary Policy in crude oil cases adopted by DOE pursuant to the Settlement Agreement in the *Department of Energy Stripper Well Exemption Litigation,* M.D.L. 378 (D. Kan.). *See* 51 FR 27899 (August 4, 1986). Under that policy, up to 20 percent of the amount received in a crude oil case will be set aside for the payment of claims and the balance will be divided between the states, territories and possessions of the United States, and the DOE for deposit in the U.S. Treasury.

The Consent Order constitutes neither an admission by Shell nor a finding by DOE of a violation of the federal petroleum price and allocation regulations. Shell and DOE mutually release each other from claims and actions with respect to the matters covered by the proposed Consent Order. The proposed Consent Order does not affect the right of any other party to take action against Shell, or of Shell or the DOE to take action against any other party.

Following the effective date of the Consent Order, Shell and DOE will seek to terminate the proceedings described above. DOE has determined that it is inappropriate to seek civil or criminal penalties for the matters covered by the Consent Order based on the information and evidence in its possession.

Submission of Written Comments

The proposed Consent Order cannot be made effective until the conclusion of the public review process, of which this Notice is a part.

Interested parties are invited to submit written comments concerning this proposed Consent Order to: Leslie Wm. Adams, Deputy Solicitor, Economic Regulatory Administration, U.S. Department of Energy, RG–44, 1000 Independence Avenue, SW., Washington, DC 20585.

In addition, a public hearing, beginning at 10:00 a.m. on February 11, 1987, will be held at the Department of Energy Auditorium, Room GE–086 in the Forrestal Building at the address above. Requests to appear should be addressed to Mr. Adams. All comments received by the thirtieth day following publication of this Notice in the **Federal Register,** and all statements made at the hearing, will be considered before determining whether to adopt the proposed Consent Order as a final Order. Any modifications of the proposed Consent Order which significantly alter its terms or impact will be published for additional comment. If ERA determines to issue the proposed Consent Order as a final Order, the proposed Order will be made final and effective by publication of a Notice in the **Federal Register.**

Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Washington, DC, December 23, 1986.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

Consent Order With Shell Oil Company; Case No. RSHA00001

I. Introduction

101. This Consent Order is entered into between Shell Oil Company (Shell) and the United States Department of Energy (DOE). This Consent Order settles and finally resolves all civil and administrative claims and disputes, whether or not heretofore asserted, between the DOE, as hereinafter defined, and Shell, as hereinafter defined, relating to Shell's compliance with the federal petroleum price and allocation regulations, as hereinafter defined, during the period January 1, 1973, through January 27, 1981 (all the matters settled and resolved by this Consent Order are referred to hereafter as "the matters covered by this Consent Order").

II. Jurisdiction, Regulatory Authority and Definitions

201. This Consent Order is entered into by the DOE pursuant to the authority conferred upon it by Sections 301 and 503 of the Department of Energy Organization Act (DOE Act), 42 U.S.C.

7151 and 7193, Executive Order No. 12009, 42 FR 46267 (1977); Executive Order No. 12038, 43 FR 4957 (1978); and 10 CFR 205.199J.

202. The Economic Regulatory Administration (ERA) was created by Section 206 of the DOE Act, 42 U.S.C. 7136. In Delegation No. 0204–4, the Secretary of Energy delegated responsibility for the administration of the federal petroleum price and allocation regulations to the Administrator of the ERA.

203. For purposes of this Consent Order, the phrase "federal petroleum price and allocation regulations" means all statutory requirements and administrative regulations and orders regarding the pricing and allocation of crude oil, refined petroleum products, natural gas liquids, and natural gas liquid products, including the entitlements and mandatory oil imports programs, administered by the DOE. The federal petroleum price and allocation regulations include (without limitation) the pricing, allocation, reporting, certification, and recordkeeping requirements imposed by or under the Economic Stabilization Act of 1970, the Emergency Petroleum Allocation Act of 1973, the Federal Energy Administration Act of 1974, Presidential Proclamation 3279, all applicable DOE regulations codified in 6 CFR Parts 130 and 150 and 10 CFR Parts 205, 210, 211, 212, and 213, and all rules, rulings, guidelines, interpretations, clarifications, manuals, decisions, orders, notices, forms, and subpoenas relating to the pricing and allocation of petroleum products. The provisions of 10 CFR 205.199J and the definitions under the federal petroleum price and allocation regulations shall apply to this Consent Order except to the extent inconsistent herewith. Reference herein to "DOE" includes, besides the Department of Energy, the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, the Office of Special Counsel the Economic Regulatory Administration and all predecessor and successor agencies. References in this Consent Order to "Shell" shall include: (1) Shell Oil Company and all of its subsidiaries and affiliates, and their predecessors and successors in interest, but only for the acts of such companies while they were subsidiaries or affiliates of Shell, (2) all of Shell's petroleum-related activities as refiner, producer, operator, working interest or royalty interest owner, reseller, retailer, natural gas processor, or otherwise and, except for purposes of Article IV, *infra*, (3) Shell's directors, officers, and employees.

III. Facts

The stipulated facts upon which this Consent Order is based are as follows:

301. During the period covered by this Consent Order, Shell was a "refiner," "producer," and "reseller" as those terms are defined in the federal petroleum price and allocation regulations and was subject to the jurisdiction of the DOE. Shell engaged in, among other things, the production, importation, sale, and refining of crude oil, the sale of residual fuel oil, motor gasoline, middle distillates, aviation fuel, propane, and other refined petroleum products, and the extraction, fractionation, and sale of natural gas liquids and natural gas liquid products.

302. In 1973, the DOE began an audit to determine Shell's compliance with the federal petroleum price and allocation regulations. In 1977, pursuant to the mandate of the Secretary of Energy, ERA continued the audit on an intensified basis. The audit encompassed an examination of Shell's policies and procedures pertaining to, and Shell's compliance with, the federal petroleum price and allocation regulations.

303. As part of its audit, the DOE examined Shell's books and records relating to Shell's compliance with the federal petroleum price and allocation regulations and the reporting requirements imposed by those regulations. At the DOE's request, Shell prepared and submitted to the auditors a substantial number of specific responses to audit inquiries not necessarily limited to, or readily available from, individual books or records.

304. During the course of the DOE's audit, the enforcement proceedings instituted by the DOE and the negotiations that led to this Consent Order, the DOE raised certain issues with respect to Shell's application of the federal petroleum price and allocation regulations. The DOE has taken various administrative enforcement actions against Shell, including the issuance of letters, Notices of Probable Violation, Proposed Remedial Orders, and Remedial Orders. Shell maintains, however, that it has calculated its costs, determined its prices, sold its crude oil and petroleum products, and operated in all other respects in accordance with the federal petroleum price and allocation regulations. The DOE and Shell disagree in several respects concerning the proper application of the federal petroleum price and allocation regulations to Shell's activities with respect to the matters covered by this Consent Order, and each believes that its respective legal and factual positions on the matters resolved by this Consent Order are meritorious. These positions were emphasized in the intensive review and exchange of information conducted during the audit and subsequent negotiation process. However, in order to avoid the expense of protracted and complex litigation and the disruption of its orderly business functions, Shell has agreed to enter into this Consent Order. The DOE believes this Consent Order constitutes a satisfactory resolution of the matters covered herein and is in the public interest.

Terms and Conditions

IV. Remedial Provisions

401. In full and final settlement of all matters covered by this Consent Order and in lieu of all other remedies which have been or might be sought by the DOE against Shell for such matters under 10 CFR 205.199I or otherwise, Shell shall pay a total of one hundred eighty million dollars ($180,000,000), plus interest, in the manner specified in paragraphs 402 and 403. Of this amount, the sum of $160 million is attributable to alleged crude oil violations and the sum of $20 million is attributable to alleged refined product violations.

402. Within thirty (30) days of the effective date of this Consent Order, Shell shall pay one-hundred eighty million dollars ($180,000,000), plus interest to be computed in accordance with paragraph 403, to DOE for distribution pursuant to the special refund procedures prescribed by 10 CFR Part 205, Subpart V.

403. Interest shall be earned from the date of execution of this Consent Order by DOE at an initial interest rate equal to the annual coupon equivalent for the average price bid at the most recent auction of 13-week U.S. Treasury Bills preceding said date of execution. Thereafter, the interest rate shall be periodically adjusted to the level of the annual coupon equivalent for the average price bid at the auction of 13 week Treasury Bills next following the first day of each calendar quarter, beginning with the calendar quarter next following said date of execution. The adjusted interest rate will apply on the first day after said auction and will continue to apply until and including the day of the next such auction following the first day of the next calendar quarter or until payment, whichever is earlier. Interest shall be deemed earned each day as of 2:00 p.m. Eastern Time at 1/365th of the rate then in force and shall

be compounded quarterly as of the date of each adjustment of the rate.

V. Issues Resolved

501. All pending and potential civil and administrative claims, whether or not known, demands, liabilities, causes of action or other proceedings by the DOE against Shell regarding Shell's compliance with and obligations under the federal petroleum price and allocation regulations during the period covered by this Consent Order, whether or not heretofore raised by an issue letter, Notice of Probable Violation, Proposed Remedial Order, Remedial Order, action in court or otherwise, are resolved and extinguished as to Shell by this Consent Order.

502. (a) Except as otherwise provided herein, compliance by Shell with this Consent Order shall be deemed by the DOE to constitute full compliance for administrative and civil purposes with all federal petroleum price and allocation regulations for matters covered by this Consent Order. In consideration for performance as required under this Consent Order by Shell, except as to those matters excluded by paragraph 505, the DOE hereby releases Shell completely and for all purposes from all administrative and civil judicial claims, demands, liabilities or causes of action, including without limitation claims for civil penalties, that the DOE has asserted or might otherwise be able to assert against Shell before or after the date of this Consent Order for alleged violations of the federal petroleum price and allocation regulations with respect to matters covered by this Consent Order. The DOE will not initiate or prosecute any such administrative or civil matter against Shell or cause or refer any such matter to be initiated or prosecuted, nor will the DOE or its successors directly or indirectly aid in the initiation of any such administrative or civil matter against Shell or participate voluntarily in the prosecution of such actions. The DOE will not assert voluntarily in any administrative or civil judicial proceeding that Shell has violated the federal petroleum price and allocation regulations with respect to the matters covered by this Consent Order or otherwise take any action with respect to Shell in derogation of this Consent Order. However, nothing contained herein shall preclude the DOE from defending the validity of the federal petroleum price and allocation regulations.

(b) This Consent Order settles and finally resolves all aspects of Shell's liability to the DOE under the federal petroleum price and allocation regulations, including but not limited to its capacity as an operator or working interest or royalty interest owner of a crude oil producing property. In addition, if Shell was the operator of a property that produced crude oil for all or part of the period covered by this Consent Order, the DOE shall not initiate or prosecute any enforcement action against any person for noncompliance with the federal petroleum price and allocation regulations during such period relative to such property, except to the extent such person received its interest from such property in kind. However, the DOE reserves the right to initiate and prosecute enforcement actions, against any person other than Shell for noncompliance with the federal petroleum price and allocation regulations, including suits against operators for overcharges for crude oil when Shell was or is a working interest or royalty interest owner in such crude oil production. Shell and the DOE agree that the amount paid to the DOE pursuant to this Consent Order is not attributable to Shell's activities as a working interest or royalty interest owner on properties on which it was or is not the operator. Furthermore, Shell and the DOE agree that the Consent Order and the payments hereunder do not resolve, reduce or release the liability of any other person for violations on properties of which (but only for the times during which) Shell was or is a working interest or royalty interest owner (and not the operator) or affect any rights or obligations between Shell and the operator or any other working interest or royalty interest owner.

(c) The DOE has determined that it would be inappropriate to seek or recommend criminal fines or penalties based on the information and evidence presently in its possession for the matters covered by this Consent Order, provided, however, that nothing in this Consent Order precludes the DOE from (1) seeking or recommending such criminal fines or penalties if information subsequently coming to its attention indicates, either by itself or in combination with information or evidence presently known to the DOE, that a criminal violation may have occurred or (2) otherwise complying with its obligations under law with regard to forwarding information of possible criminal violations of law to appropriate authorities. Nothing contained herein may be construed as a bar, estoppel, or defense against any criminal or civil action brought by an agency of the United States other than the DOE under (i) Section 210 of the Economic Stabilization Act of 1970 or (ii) any statute or regulation other than the federal petroleum price and allocation regulations. Finally, this Consent Order does not prejudice the rights of any third party or Shell in any private action, including an action for contribution by or against Shell.

(d) Shell releases the DOE completely and for all purposes from all administrative and civil judicial claims, liabilities, or causes of action that Shell has asserted or may otherwise be able to assert against the DOE relating to the DOE's administration of the federal petroleum price and allocation regulations. This release, however, does not preclude Shell from asserting any factual or legal position or argument as a defense against any action, claim, or proceeding brought by the DOE, the United States, or any agency of the United States.

503. Commencing within thirty (30) days after the effective date of this Consent Order, Shell and the DOE will file or cause to be filed appropriate pleadings and will take all other steps necessary to withdraw all claims and dismiss with prejudice all proceedings against Shell covered by this Consent Order then pending or subsequently filed before the DOE's Office of Hearings and Appeals (OHA) or the Federal Energy Regulatory Commission (FERC) and to dismiss with prejudice any court proceeding then pending or subsequently filed involving an appeal from or seeking review of a decision by the OHA or the FERC in any such proceeding.

504. Execution of this Consent Order constitutes neither an admission by Shell nor a finding by the DOE of any violation by Shell of any statute or regulation. The DOE has determined that it is not appropriate to seek to impose civil penalties for the matters covered by this Consent Order, and the DOE will not seek any such civil penalties. The payment made by Shell pursuant to this Consent Order is not to be considered for any purpose as penalties, fines, or forfeitures or as payment in lieu of penalties, fines or forfeitures.

505. Notwithstanding any other provision herein, with respect to the matters covered by this Consent Order, the DOE reserves the right to initiate an enforcement proceeding or to seek appropriate penalties for any newly discovered regulatory violations committed by Shell, but only if Shell has concealed facts relating to such violations. The DOE and Shell also reserve the right to seek appropriate

judicial remedies, other than full rescission of this Consent Order, for any misrepresentation of fact material to this Consent Order during the course of the audit or the negotiations that preceded this Consent Order.

VI. Recordkeeping, Reporting and Confidentiality

601. Shell shall maintain such records as are necessary to demonstrate compliance with the terms of this Consent Order. To assist DOE in the distribution of the monies paid pursuant to paragraph 402, Shell shall also maintain sales volume data and customers' names and addresses regarding its sales of crude oil and refined petroleum products for the transactions covered by this Consent Order until thirty (30) days after final distribution by DOE of the funds paid pursuant to paragraph 402, *supra.* If requested, Shell shall make such information available to DOE. Shell shall maintain such records as may be identified by DOE for its use pursuant to paragraph 602. Except as otherwise provided in this paragraph, upon completion of payment to DOE of the amount set forth in paragraph 402 of this Consent Order, Shell is relieved of its obligation to comply with the recordkeeping requirements of the federal petroleum price and allocation regulations relating to the matters covered by this Consent Order.

602. Except for formal requests for information regarding other firms subject to the DOE's information gathering and reporting authority, Shell will not be subject to any audit requests, report orders, subpoenas, or other administrative discovery by DOE regarding the matters covered by this Consent Order.

603. The DOE will treat the sensitive commercial and financial information provided by Shell or obtained by the DOE in its audit of Shell and related to the matters covered by this Consent Order as confidential and proprietary and will not disclose such information unless required to do so by law, including a request by a duly authorized committee or subcommittee of Congress. If a request or demand for release of any such information is made pursuant to law, the DOE will claim any privilege or exemption reasonably available to it. The DOE will provide Shell with ten (10) days actual notice, if possible, of any pending disclosure of such information, unless prohibited or precluded from doing so by law or request of Congress. The DOE will retain the audit information which it has acquired during its review of Shell's compliance with the federal petroleum price and allocation regulations in accordance with the DOE's established records retention procedures. Notwithstanding the otherwise confidential treatment afforded such information by the terms of this Consent Order, the DOE will make such information available to the Department of Justice (DOJ) in response to a request pursuant to the DOJ's statutory authority by a duly authorized representative of the DOJ. If requested by the DOJ, the DOE shall not disclose that such a request has been made. Nothing in this paragraph shall be deemed to waive or prejudice any right Shell may have independent of this Consent Order regarding the disclosure of sensitive commercial and financial information.

VII. Contractual Undertaking

701. It is the understanding and express intention of Shell and the DOE that this Consent Order constitutes a legally enforceable contractual undertaking that is binding on the parties and their successors and assigns. Nothwithstanding any other provision herein, Shell (and its successors and assigns) and the DOE each reserves the right to institute a civil action in an appropriate United States district court, if necessary, to secure enforcement of the terms of this Consent Order, and the DOE also reserves the right to seek appropriate penalties and interest for any failure to comply with the terms of this Consent Order. The DOE will undertake the defense of the Consent Order, as made effective, in response to any litigation challenging the Consent Order's validity in which the DOE is named a party. Shell agrees to cooperate with the DOE in the defense of any such challenge.

VIII. Final Order

801. Upon becoming effective, this Consent Order shall be a final order of DOE having the same force and effect as a remedial order issued pursuant to section 503 of the DOE Act, 42 U.S.C. 7139, and 10 CFR 205.199B. Shell hereby waives its right to administrative or judicial review of this Order.

IX. Effective Date

901. This Consent Order shall become effective as a final Order of the DOE upon notice to that effect being published in **Federal Register.** Prior to that date, the DOE will publish notice in the **Federal Register** that it proposes to make this Consent Order final and, in that notice, will provide not less than thirty (30) days for members of the public to submit written comments and an opportunity to appear at a public hearing conducted by ERA. The DOE will consider all written comments and statements made at the hearing to determine whether to adopt the Consent Order as a final order, to withdraw agreement to the Consent Order, or to attempt to renegotiate the terms of the Consent Order.

902. Until the effective date, the DOE reserves the right to withdraw consent to this Consent Order by written notice to Shell, in which event this Consent Order shall be null and void. If this Consent Order is not made effective on or before the one hundred twentieth (120th) day following execution by Shell, Shell may, at any time thereafter until the effective date, withdraw its agreement to this Consent Order by written notice to the DOE in which event this Consent Order shall be null and void.

I, the undersigned, a duly authorized representative, hereby agree to and accept the foregoing Consent Order on behalf of Shell Oil Company.

Dated: December 19, 1986.

John F. Bookout,

President and Chief Executive Officer, Shell Oil Company.

I, the undersigned, a duly authorized representative, hereby agree to and accept the foregoing Consent Order on behalf of the Department of Energy.

Dated: December 18, 1986.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

[FR Doc. 86-29280 Filed 12-30-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-55-NG]

Direct Energy Marketing Limited; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting authorization to Direct Energy Marketing Limited (DEML) to import natural gas from Canada. The order issued in ERA Docket No. 86-55-NG authorizes DEML to import into the U.S. from Canada up to 200 Bcf of Canadian gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural

Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 16, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-29281 Filed 12-30-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF87-120-000]

Badger Creek Cogen, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 3, 1986, Badger Creek Cogen, Inc. (Applicant), of P.O. Box 19398, Houston, Texas 77224, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of a combustion turbine generator and a heat recovery steam generator (HRSG). Steam recovered from the HRSG will be used for enhanced oil recovery by the Cities Service Oil and Gas Corporation. The primary energy source will be natural gas. The net electric power production capacity will be 44,829 kW. Installation of the facility will begin in April 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29238 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-126-000]

Bear Mountain Cogen Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 8, 1986, Bear Mountain Cogen, Inc. (Applicant), of P.O. Box 19398, Houston, Texas 77224, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of a combustion turbine generator, a heat recovery steam generator (HRSG). Steam recovered from the HRSG will be used for enhanced oil recovery by the Cities Service Oil & Gas Corporation. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 44,851 kW. Installation of the facility will begin in March 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29239 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-132-000]

Chalk Cliff Cogen, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 10, 1986, Chalk Cliff Cogen, Inc. (Applicant), of P.O. Box 19398, Houston, Texas 77224, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of a combustion turbine generator, a heat recovery steam generator (HRSG). Steam recovered from the HRSG will be used for enhanced oil recovery by Cities Service Oil & Gas Corporation. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 44,453 kW. Installation of the facility will begin in May 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29240 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-736-001]

Cogentrix of Virginia, Inc. (Allied Corporation); Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 4, 1986, Cogentrix of Virginia, Inc. (Applicant), of Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28210 submitted for filing an application for recertification of a facility as a qualifying cogeneration

facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the Allied Corporation, Fibers Division plant in Hopewell, Virginia 23860. The facility will consist of six (6) stoker-fired boilers and two (2) extraction/condensing steam turbine-generators. The extracted steam will be utilized for process needs at the Allied Corporation chemical manufacturing plant. The primary energy source is coal. The net electric power production capacity of the facility is 77,800 kW. The facility is scheduled to start commercial operation on or about December 31, 1987.

By order issued February 7, 1986, the Director of Office of Electric Power Regulation granted certification of the facility as a cogeneration facility under Docket No. QF85-736-000.

The recertification is requested due to change of ownership. Under the instant application ownership will be transferred from Signal Capital Corporation, the original owner, to Cogentrix of Virginia, Inc.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29241 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-121-000]

First Energy Associates; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 4, 1986, First Energy Associates (Applicant), of 71 Spit Brook Road, Nashua, New Hampshire 03060, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Hinesburg, Vermont and will consist of three combustion turbine generators, a heat recovery steam generator and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility in the form of steam and chilled water will be sold to the International Cheese Company for process use. The electric power production capacity of the facility will be 25.1 MW. The primary source of energy will be fuel oil. Construction of the facility is expected to begin April 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intrevene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29242 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-56-001]

Central Maine Power Co.; Amendment to Filing

December 24, 1986.

Take notice that Central Main Power Company ("CMP"), on December 12, 1986, tendered for filing an amendment to its previous filing of October 29, 1986, which proposed changes in its F.E.R.C. Electric Tariff, 8th Revised Volume No. 1, Wholesale Electric Rate for Other Utilities. Under the rate increase effective January 1, 1987, CMP would be permitted to increase its wholesale base rate by $325,000 for the twelve-month period ended June 30, 1985; effective October 1, 1987, CMP would be permitted to further revise its wholesale base rate by an additional $324,000 for the twelve-month period ended June 30, 1985.

The proposed tariff implements a Stipulation and Contracts between CMP and its wholesale customers, Kennebunk Light and Power District, Inhabitants of the Town of Madison (Madison Electric Works), and Fox Islands Electric Cooperative, Inc. Copies of the filing have been served on CMP's above-named wholesale customers, on the Main Public Utilities Commission, and on the Office of the Main Public Advocate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and 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 January 5, 1987. 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. 86-29266 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI87-115-000 and CI87-121-000]

Colorado Interstate Gas Co.; Applications on Behalf of Producer-Suppliers of Colorado Interstate Gas Company for Blanket Limited-Term Abandonment and Blanket Limited-Term Certificates of Public Convenience and Necessity With Pre-Granted Abandonment

December 24, 1986.

Take notice that on November 17, 1986, as supplemented on December 5, 1986, Colorado Interstate Gas Company,

P.O. Box 1087, Colorado Springs, Colorado 80944 (Applicant), filed in this proceeding applications pursuant to section 7 of the Natural Gas Act. Applicant requests, on behalf of producer-suppliers currently selling natural gas to Applicant pursuant to certificates of public convenience and necessity, an order: (1) Authorizing the blanket limited-term abandonment by Applicant's producer-suppliers of certain sales for resale of natural gas in interstate commerce; and (2) issuing a blanket limited-term certificate of public convenience and necessity with pre-granted abandonment authorizing the sale for resale of such natural gas in interstate commerce, all for a period of two years, as more fully set forth in the applications or file with the Commission in the subject dockets, and open for public inspection.[1]

Applicant states that the purpose of its applications is to provide Applicant and its customers with relief from the problem of currently escalating potential take-or-pay liability, while retaining the long-term reserves needed to meet customer requirements in the future. Also, the applications are intended to permit Applicant's producer-suppliers to compete for natural gas sales in the current market, thereby generating needed cash flow for such producer-suppliers. Accordingly, Applicant states that the authority requested herein will permit Applicant's producer-suppliers, upon release of natural gas by Applicant, to abandon sales of natural gas to Applicant for a limited-term. Applicant expects that in any negotiation with a producer-supplier in which gas is released pursuant to the authority requested herein, the net effect of such negotiation will be to lower Applicant's system weighted average cost of gas and/or reduce Applicant's take-or-pay exposure. All volumes actually released in any event will relieve Applicant of take-or-pay liability associated with those volumes. This will provide Applicant the flexibility to gain price concessions, where appropriate, on gas not released, in conjunction with released gas, and allow Applicant to gain take-or-pay relief to the benefit of both Applicant and its customers.

In further support of its applications, Applicant states that its natural gas sales markets are in a state of rapid decline, and that this decline has led to a situation in which Applicant has been unable to purchase available volumes of natural gas under existing agreements with Applicant's producer-suppliers in sufficient volumes to prevent an increase in its potential take-or-pay liability. A number of factors have contributed to this problem. Presently, under Applicant's FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 34, a Full Requirement Customer is defined as a customer which purchases from Applicant or other Full Requirement Customers of Applicant, at least 75 percent of its total gas requirements. Consequently, 25 percent of a customer's requirements may be purchased from sources other than Applicant, and the customer will still remain a Full Requirement Customer. As the price of natural gas on the spot market has declined, Applicant's customers, both full requirement and partial requirement, have reduced their purchases from Applicant in order to purchase spot market gas. In addition, conservation, fuel switching by industrial customers, and reduction in purchases by other pipelines have all acted to reduce the volumes of sales made by Applicant. The extent of this reduction has been dramatic, as the following chart indicates:

	Bcf (annual)			
	1979	1983	1985	1986 (est.)
CIG total sales	403	276	204	135
Public Service Group [1] (CIG's largest customers)	183	140	127	87
Natural Gas Pipeline Co. (CIG's major partial requirement customer)	79	60	9	1

[1] Consists of Public Service Company of Colorado, Cheyenne Light, Fuel and Power Company and Western Gas Supply Company.

Applicant further states that, in compliance with Commission policy, Applicant has been providing transportation for its customers, including its Full Requirement Customers. This, when coupled with the effects of conservation and competition from alternate fuels, has operated to reduce the volumes of natural gas sold by Applicant. The subject applications represent one tool which Applicant and its producer-suppliers may employ in a cooperative effort to attempt to cope with the situation.

As any abandonment will be by mutual agreement of both Applicant and the producer-supplier, it is impossible to determine which certificated sales will be abandoned. Applicant is currently providing transportation under NGA section 7 authorization, and under section 311 of the NGPA, and has applied for blanket transportation authority under Order No. 436. Consequently, producer-suppliers who abandon sales to Applicant should have access to transportation for selling the abandoned gas to others. Applicant therefore proposes to file a quarterly report, within 45 days of the end of each quarter, which report will provide details regarding the limited-term abandonment of any sale previously certificated by the Commission. The following volumes may be subject to the requested authorization:

NGPA price category		Estimated 1987 annual deliverability (MMcf)
104	(Post-1974—all producers)	11,795
104	(Post-1974—small producers).	1,900
104	(1973-1974—large producers).	2,035
104	(Replacement/recompletion—small producers).	1,172
104	(Replacement/recompletion—large producers).	8,845
104	(Pre-1973 flowing gas—small producers).	11,637
104	(Pre-1973 flowing gas—large producers).	92,850
104	(Rocky Mountain—small producers).	2,320
104	(Rocky Mountain—large producers).	1,904
104	(Minimum rate gas—all producers).	12,300
106	(Rollover—small producers)	241
106	(Rollover—large producers)	3,491
	Total	150,490

The above volumes do not include volumes subject to Applicant's Gas Search Program. Certain other volumes priced under NGPA sections 108 and 109 are also subject to NGA abandonment requirements and thus the abandonment requested here; however, these volumes are by their very natural minimal, and Applicant has not separately identified those volumes.

Applicant requests a waiver of those portions of Parts 154 and 271 of the Commission's Regulations as granted by the Commission to *Transcontinental Gas Pipe Line Corporation*, 36 FERC ¶ 61,403. Specifically, Applicant requests

[1] It is not requested that the authorization sought in these applications apply to natural gas reserves discovered pursuant to the Gas Search Program authorized January 7, 1974, in Docket No. CP73-184, *et al.*

a waiver of the requirement under Part 154 of the Commission's Regulations that Applicant's producer-suppliers establish and maintain rate schedules for the sales of released gas. Applicant also requests that its producer-suppliers be permitted automatically to collect the monthly adjustment on released gas; that the requirement for filing a blanket affidavit to cover sales of released gas, in accordance with § 154.94(h) of the Regulations, be waived; and, to the extent Applicant's producer-suppliers qualify for collection of any allowance under section 110 of the NGPA, the requirements that they comply with § 154.94(k) and Part 271 of the Commission's Regulations be waived for released volumes.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 8, 1987, 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.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29265 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-143-000]

Green Mountain Power Corp.; Filing

December 24, 1986.

Take notice that on December 8, 1986, Green Mountain Power Corporation (GMP) tendered for filing an Amendment to its Rate Schedule FERC No. 85 executed by Burlington Electric Department (Burlington).

GMP states that the Amendment extends the termination date of the Rate Schedule that was approved in Docket No. ER86-63-000. The original Schedule was to expire by its terms on December 31, 1985. The Amendment extends the termination date from year to year until either party gives appropriate notice of termination.

The Amendment also clarifies language in Paragraph 8 concerning Burlington's indemnification of GMP from liability in certain circumstances.

Any person desiring to be heard or to protest this 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, 385.214). All such motions or protests should be filed on or before January 5, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29267 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-71-000]

Portland General Electric Co.; Filing

December 24, 1986.

Take notice that on December 8, 1986, Portland General Electric Company ("Company") tendered for filing an amendment to the above docket providing additional background information concerning the dispute and settlement referenced in the recitals of the Settlement Exchange Agreement previously filed with the Federal Energy Regulatory Commission

Any person desiring to be heard or to protest this 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, 385.214). All such motions or protests should be filed on or before January 5, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29268 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-66-000]

Puget Sound Power & Light Co.; Filing

December 24, 1986.

Take notice that on December 8, 1986, Puget Sound Power & Light Company ("Company") tendered for filing an amendment to the above docket providing additional background information concerning the dispute and settlement referenced in the recitals of the Settlement Exchange Agreement previously filed with the Federal Energy Regulatory Commission

Any person desiring to be heard or to protest this 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, 385.214). All such motions or protests should be filed on or before January 5, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29269 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-630-000]

Utah Power & Light Co.; Filing

December 24, 1986.

Take notice that on December 4, 1986, Utah Power & Light Company (Company) tendered for filing a compliance report in accordance with the Commission's order issued November 7, 1986.

In compliance with the Commission's order the company submits its Average System Cost (ASC) rate for the Idaho jurisdiction as determined in the Bonneville Power Association (BPA) report, with modifications reflecting the Commission's finding on Fuel Stock.

Any person desiring to be heard or to protest this 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, 385.214). All such motions or protests should be filed on or before January 5,

1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29270 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-57-000]

The Washington Water Power Co.; Filing

December 24, 1986.

Take notice that December 8, 1986, Washington Water Power Company ("Company") tendered for filing an amendment to the above docket providing additional background information concerning the dispute and settlement referenced in the recitals of the Settlement Exchange Agreement previously filed with the Federal Energy Regulatory Commission.

Any person desiring to be heard or to protest this 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, 385.214). All such motions or protests should be filed on or before January 5, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29271 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-122-000]

Foster Wheeler Power Systems, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 4, 1985, Foster Wheeler Power System, Inc. (Applicant), of 110 South Orange Avenue, Livingston, New Jersey 07039, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located near Morgantown, West Virginia. The facility will consist of two (2) circulating fluidized bed steam generators and one (1) steam turbine generator. The steam recovered from the facility will be utilized for space heating and cooling of the West Virginia University's three campuses. The net electric power production capacity will be 165 megawatt. The primary energy source will be bituminous coal.The construction of the facility is scheduled for December 1, 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29243 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-133-000]

Live Oak Cogen, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 10, 1985, Live Oak Cogen, Inc. (Applicant), P.O. Box 19398, Houston, texas 77224, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kern County, California. The facility will consist of a combustion turbine generator and a heat recovery steam generator (HRSG). Steam recovered from the HRSG will be used for ehnanced oil recovery by the Cities Service Oil & Gas Corporation. The primary energy source will be natural gas. The net electric power production capacity will be 44,536 kW. Installation of the facility will begin May 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29244 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-123-000]

Oxford Cogeneration Associates; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 4, 1986, Oxford Cogeneration Associates (Applicant), of 255 West 98th Street, Suite 7A—Dockrell, New York, New York 10025, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Oxford, Massachusetts. The facility will consist of a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing turbine generator. Thermal energy recovered from the facility will be used for pasteurization, drying, heating and space heating and cooling. Installation of the facility is scheduled to begin in 1987. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 99 MW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29245 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-136-000]

Panhandle Eastern Pipe Line Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 12, 1986, Panhandle Eastern Pipe Line Company (Applicant), of 3444 Broadway, Kansas City, Missouri 64111, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Applicant's address. The facility will consist of two reciprocating engines and a heat recovery steam generator. The head energy recovered from the facility will be used for space heating and cooling of the office building. The electric power production capacity of the facility will be 700 kW. The primary energy source will be natural gas. The operation of the facility is expected to commence on or about May 1, 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29246 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-129-000]

Ramapo Cogeneration Limited Partnership; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 9, 1986, Ramapo Cogeneration Limited Partnership (Applicant), of 25 Eagle Street, Albany, New York 12207, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Ramapo, New York. The facility will consist of a combustion turbine generator, a heat recovery steam generator, and a steam turbine generator. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 79 MW. Thermal energy recovered from the facility will be used for baking, heating, drying and sanitizing in an industrial process. Installation of the facility will begin in 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29247 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF87-124-000]

Rockville Cogeneration Associates; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 24, 1986.

On December 4, 1986, Rockville Cogeneration Associates (Applicant), c/o Kornmeier, McCarthy, Lepon & Harris, of 2011 Eye Street, NW., Suite 401, Washington, DC 20006, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Hunting Hill, Montgomery County, Maryland 20850. The facility will consist of a combustion turbine, a heat recovery steam generator, and an extraction/condensing turbine generator. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 240 MW. Thermal energy recovered from the facility will be sold to a district heating and cooling system. Installation of the facility is scheduled to begin in 1987.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29248 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-155-000]

Allegheny Power Service Corp.; Notice of Filing

December 24, 1986.

Take notice that on December 12, 1986, Allegheny Power Service Corporation (APSC) on behalf of West Penn Power Company, tendered for filing Amendment No. 12 to its Interchange Aqreement dated February 1, 1968, with Duquesne Light Company, West Penn Power Company Rate Schedule FPC No. 24. A Certificate of Concurrence by Duquesne Light Company was also filed. Amendment No. 12 terminates an interconnecton point at Bridgeville, Pennsylvania, between the parties. West Penn Power Company does not anticipate any significant revenue effects as a result of Amendment No. 12.

Copies of this filing were served upon Duquesne Light Company and the Pennsylvania Public Utility Commission.

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, 385.214). All such motions or protests should be filed on or before January 7, 1987. 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. 86-29249 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EF85-2011-006 and EF85-2021-006]

Bonneville Power Administration; Notice of Filing

December 24, 1986.

Take notice that on December 22, 1986, Bonneville Power Administration (BPA) of the United States Department of Energy tendered for filing a proposed modification to the 1985 Surplus Firm Power (SP-85) rates currently under Commission consideration. This proposed modification has been identified as the SP-85 (Modified) rate schedule. BPA requests confirmation and approval of the SP-85 rate, as modified, pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e(a)(2), and the Commission's rules for the confirmation and approval of rates for Federal power marketing agencies, 18 CFR 300 *et seq.* BPA proposes that its SP-85 (Modified) rate schedule be effective upon final Commission approval of BPA rates in the above entitled dockets.

This proposal is a modification of the "Availability" section (Section I) of the SP-85 rate to permit BPA's Direct Service Industrial customers (DSIs) in the Pacific Northwest who currently purchase under the IP rate schedule to purchase surplus firm power to serve "incremental" load. It is designed to permit BPA to gain experience in regional marketing during the near-term period of BPA's capacity and energy surplus.

Any person desiring to be heard or to protest this application 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 section 211 or 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 January 8, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29263 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-704-002]

Canal Electric Co.; Notice of Filing

December 24, 1986.

Take notice that on December 9, 1986, Canal Electric Company (Canal) tendered for filing its termination Supplement to the Capacity Acquistion Agreement, eliminating therefrom a provision which would automatically permit Canal to earn a return on the unamortized balance of the Termination Cost in the event the Commission's existing Policy is changed.

Any person desiring to be heard or to protest this 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, 385.214). All such motions or protests should be filed on or before January 7, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29250 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC87-7-000]

Consumers Power Co.; Notice of Filing

December 24, 1986.

Take notice that on December 18, 1986, Consumers Power Company (Consumers) submitted an application for Authority to Sell Facilities to the Wolverine Power Supply Cooperative (Wolverine).

Pursuant to the Blendon Interconnections Facilities Agreement dated February 1, 1986 between Consumers and Wolverine and the Pere Marquette Interconnection Facilities Agreement dated July 1, 1982 between Consumers and Wolverine, Consumers proposes to sell to Wolverine certain 138 kV electric substation facilities located at Consumers' Blendon Substation in the Southwest ¼ of section 8 of Blendon Township, Ottawa County, Michigan, and in the North ½ of section 20 of Amber Township, Ottawa County, Michigan. The Consideration for the proposed sales is $392,788.37 in the case of the Blendon Substation Facilities and $314,708.50 in the case of the Pere Marquett Substation Facilities, which is based upon consumers' actual original cost of providing, installing and placing in service such substation facilities.

Sale of the substation facilities will establish two 138 kV interconnections between Consumers and Wolverine, which will facilitate exchanges of electric energy between Consumers and Wolverine. Consumers requests approval of its Application pursuant to section 203(a) of the Federal Power Act.

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 Rule 214

or 211 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 January 7, 1987. 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. 86–29251 Filed 12–30–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87–90–000]

The Dayton Power and Light Co.; Amendment to Filing

December 24, 1986.

Take notice that on December 19, 1986, the Dayton Power and Light Company (DP&L) tendered for filing in this docket amendments to page 3 of the Agreement and amended cost support relating to transmission charges. DP&L states in this filing that it is renewing its request for a waiver of notice requirements so that the filing may become effective December 1, 1986.

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, 385.214). All such motions or protests should be filed on or before January 7, 1987. 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. 86–29252 Filed 12–30–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87–171–000]

Florida Power & Light Co.; Notice

December 24, 1986.

Take notice, that, on December 18, 1986, Florida Power & Light Company (FPL) filed First Revised Sheet No. 9a to its FERC Electric Tariff, Second Revised Volume No. 1 and a Stipulation and Agreement as to Fuel Cost Billings. The tariff revision deletes reference to the one time election to pay a cents per kilowatt hour true up under FPL's fuel adjustment clause. FPL states that the five customers who had made that election now agree to pay fuel costs by the other method provided in FPL's tariff, and that the Stipulation resolves a disagreement as to unrecovered fuel costs.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 before January 7, 1987. 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. 86–29253 Filed 12–30–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87–46–001]

Iowa Electric Light and Power Co.; Amendment to Filing

December 24, 1986.

Take notice that on December 19, 1986, Iowa Electric Light and Power Company (the Company) tendered for filing an amendment to its filing on October 24, 1986 of Service Agreements for customers who elect to take service under the Rate RES–3.

Iowa Electric states that the amended filing corrects contracts which had eight year terms rather than the proper six year terms and includes a superseded contract that was inadvertently not filed previously. In addition, Iowa Electric has filed two contracts with West Liberty, Iowa that have been signed since its earlier filing in this docket.

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, 385.214). All such motions or protests should be filed on or before January 7, 1987. 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. 86–29254 Filed 12–30–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85–757–002]

Pacific Power and Light Co.; Notice of Filing

December 24, 1986.

Take notice that on December 3, 1986, Pacific Power and Light Company (Pacific) tendered for filing Table No. 1 dated November 14, 1986 showing the effects of the Commission's Order Accepting Rates for Filing Subject to Refund or Adjustment, and Granting Interventions under Docket No. ER85–757–000 and dated August 1, 1986. The Commission's Order revises the Average System Cost (ASC) Rate for the state of Washington applicable to the exchange of power between Bonneville and Pacific.

Any person desiring to be heard or to protest this 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, 385.214). All such motions or protests should be filed on or before January 7, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–29255 Filed 12–30–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85–762–002]

Pacific Power and Light Co.; Notice of Filing

December 24, 1986.

Take notice that on December 8, 1986, Pacific Power and Light Company (Pacific) tendered for filing Table No. 1

dated November 13, 1986 showing the effects of the Commission's Order Accepting Rates for Filing Subject to Refund or Adjustment, and Granting Interventions under Docket No. ER85-762-000 and dated August 1, 1986. The Commission's Order revises the Average System Cost (ASC) Rate for the state of Oregon applicable to the exchange of power between Bonneville and Pacific.

Any person desiring to be heard or to protest this 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 C.F.R. 385.211, 385.214). All such motions or protests should be filed on or before January 7, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29256 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-172-000]

Southern California Edison Co.; Notice of Filing

December 24, 1986.

Take notice that, on December 19, 1986, Southern California Edison Company ("Edison") tendered for filing a notice of extension of rate for the purchase of Replacement Capacity by the City of Vernon, California ("Vernon") from Edison under the provision of the following rate schedule:

	Rate schedule FERC No.
City of Vernon	154

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Vernon, California.

Any person desiring to be heard or to protest this application 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 section 211 and section 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 January 7, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29257 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-173-000]

Southern California Edison Co.; Notice of Filing

December 24, 1986.

Take notice that, on December 19, 1986, Southern California Edison Company ("Edison") tendered for filing a notice of extension of rate for the purchase of Replacement Capacity by the City of Riverside, California ("Riverside") from Edison under the provision of the following rate schedule:

	Rate Schedule FERC No.
City of Riverside	94

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Riverside, California.

Any person desiring to be heard or to protest this application 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 section 211 and section 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 January 7, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29258 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-174-000]

Southern California Edison Co.; Notice of Filing

December 24, 1986.

Take notice that, on December 19, 1986, Southern California Edison Company ("Edison") tendered for filing a notice of extension of rate for the purchase of Replacement Capacity by the City of Colton, California ("Colton") from Edison under the provision of the following rate schedule:

	Rate schedule FERC No.
City of Colton	146

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Colton, California.

Any person desiring to be heard or to protest this application 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 section 211 and section 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 January 7, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29259 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-175-000]

Southern California Edison Co.; Notice of Filing

December 24, 1986.

Take notice that, on December 19, 1986 , Southern California Edison Company ("Edison") tendered for filing a notice of extension of rate for the purchase of Replacement Capacity by the City of Banning, California ("Banning") from Edison under the provision of the following rate schedule:

	Rate schedule FERC No.
City of Banning	145

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Banning, California.

Any person desiring to be heard or to protest this application 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 section 211 and section 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 January 7, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29260 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-176-000]

Southern California Edison Co.; Notice of Filing

December 24, 1986.

Take notice that, on December 19, 1986 , Southern California Edison Company ("Edison") tendered for filing a notice of extension of rate for the purchase of Replacement Capacity by the City of Azusa, California ("Azusa"), from Edison under the provision of the following rate schedule:

	Rate schedule FERC No.
City of Azusa	144

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Azusa, California.

Any person desiring to be heard or to protest this application 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 section 211 and section 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 January 7, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29261 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-177-000]

Southern California Edison Co.; Notice of Filing

December 24, 1986.

Take notice that, on December 19, 1986, Southern California Edison Company ("Edison") tendered for filing a notice of extension of rate for the purchase of Replacement Capacity by the City of Anaheim, California ("Anaheim") from Edison under the provision of the following rate schedule:

	Rate schedule FERC No.
City of Anaheim	95

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Anaheim, California.

Any person desiring to be heard or to protest this application 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 section 211 and section 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 January 7, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29262 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-28-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 24, 1986.

Take notice the Algonquin Gas Transmission Company ("Algonquin Gas"), on December 15, 1986, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Vol. No. 1. The revised tariff sheets reflect a change other than in rate level, as defined in 18 CFR 154.63.

Algonquin Gas states that the revised tariff sheets are being filed in order to conform the applicability and character of service under Algonquin Gas' Rate Schedules F-1 and WS-1 to underlying provisions of Texas Eastern Transmission Corporation's ("Texas Eastern") SS Rate Schedule required as a result of the Commission's order authorizing abandonment of Texas Eastern's Staten Island LNG facility used in conjunction with providing its SS service, issued in *Texas Eastern Transmission Corporation*, Docket No. CP85-859-000, 35 F.E.R.C. par. 61,061 (1986). The revised tariff sheets provide that service under Rate Schedules F-1 and WS-1 may be subject to interruption or curtailment on a pro rata basis upon imposition of Rate Schedule SS Curtailment by Texas Eastern as a result of the destruction and abandonment of the LNG facility. The duration of the proposed revisions is limited to the period that elapses prior to the date on which the capacity lost by virtue of the destruction of the LNG facility is restored to Texas Eastern's system.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

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, 385.214). All such motions or protests should be filed on or before January 6, 1987. 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 the filling are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29274 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-137-003]

Florida Gas Transmission Co.; Motion To Make Revised Tariff Sheets Effective

December 24, 1986.

Take notice that on December 15, 1986, Florida Gas Transmission Company (FGT) tendered for filing a Motion To Make Revised Tariff Sheets Effective (motion). FGT has filed this motion, pursuant to § 154.67(a) of the Commission's regulations, because the instance proceeding will not be concluded nor will a Commission order be issued before December 31, 1986. The filing includes certain tariff sheets to Northwest's FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2, and Original Volume No. 3, to become effective January 1, 1987.

The filed tariff sheets comply with Ordering Paragraph (B) of the Commission's November 10, 1986 order and contain adjustments to the rates originally proposed by FGT in its July 1, 1986 filing and incorporate: (1) The balancing adjustment and Order 94 surcharge included in FGT's October 1, 1986 purchase gas adjustment filing designated as TA87-1-34-000; (2) the cost of gas included in FGT's Flex-PGA filing in Docket No. TF87-2-34-000, effective December 1, 1986; and the GRI Funding Unit (TA87-2-34-000) to be effective January 1, 1987.

FGT has mailed copies of this filing to all customers affected by this filing 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 NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 6, 1987. 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 the filling are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29277 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-27-000]

Northwest Pipeline Corp.; Tariff Filing

December 24, 1986.

Take notice that on December 15, 1986, Northwest Pipeline Corporation (Northwest) tendered for filing Sixteenth Revised Sheet No. 10-A and Second Revised Sheet No. 71 to its FERC Gas Tariff, First Revised Volume No. 1.

Northwest states that it proposes a change in its Rate Schedule T-1 Facility Charge effective February 1, 1987, in accordance with section 13 of Rate Schedule T-1, as supported by its Cost-of-Service Study and to implement an Amortizing Adjustment effective February 1, 1987, in accordance with section 14 of Rate Schedule T-1.

Northwest has served copies of this filing on Pacific Interstate Transmission Company, all its jurisdictional customers and affected state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 6, 1987. 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 the filling are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29276 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-429-026]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 24, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 15, 1986 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 the following tariff sheets:

Substitute Fifth Revised Sheet No. 16
Substitute Twelfth Revised Sheet No. 97
Substitute Eleventh Revised Sheet No. 101
Substitute Eighth Revised Sheet No. 101B
Substitute Seventh Revised Sheet No. 101D.

Texas Eastern filed an application in Docket No. CP84-429-020 on September 8, 1986 requesting authorization to reduce expanded Rate Schedule DCQ firm sales to Algonquin Gas Transmission Company (Algonquin) from 69,084 dekatherms of gas per day to 62,243 dekatherms of gas per day through a period beginning on the in-service day of all facilities contemplated in Docket No. CP84-429 *et al.* and expiring October 31, 1987. In addition, Texas Eastern the same application also requested authorization to resell to Long Island Lighting Company (LILCO) for the same period the amount Algonquin reduced (6,841 dekatherms) plus Algonquin's allotment of 4,612 dekatherms in Docket No. CP84-429-015 which was approved by Commission order issued August 1, 1986.

On December 15, 1986 Texas Eastern filed tariff sheets which proposed to implement as of December 4, 1986 for the affected participants in Docket No. CP84-429 *et al.*, Contract Adjustment-Demand rates applicable to Rate Schedules DCQ, GS, SGS, and CTS and their respective billing determinants and sales entitlements at the 1986 program levels. The tariff sheets in the December 3, 1986 filing reflected billing determinants and sales entitlements for Algonquin and LILCO that had been approved prior to Texas Eastern's September 8, 1986 filing.

The Commission approved Texas Eastern's September 8, 1986 application in Docket No. CP84-429-020 on November 26, 1986. Therefore the purpose of this filing is to set out in the above listed sheets changes in Algonquin's and LILCO's billing determinants and sales entitlements in accordance with such September 8, 1986 application and the Commission's November 26, 1986 order approving the application.

In the event the tariff sheets filed on December 3, 1986 are not approved by the Commission or are revised in any way, Texas Eastern will refile the above listed tariff sheets to reflect the final determination.

The proposed effective date of the above listed tariff sheets is December 4, 1986, the same date service commenced for the 1986 Contract Adjustment Program.

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 NE., 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 January 6, 1987. 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. 86-29275 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-170-000]

Niagara Mohawk Power Corp.; Tariff Change

December 24, 1986.

Take notice that Niagara Mohawk Power Corporation (Niagara), on December 13, 1986, tendered for filing as a rate schedule, an agreement between Niagara and Central Hudson Gas and Electric Corporation (Central Hudson) dated November 20, 1986.

Niagara presently has on file an agreement with Central Hudson Gas and Electric Corporation dated November 17, 1967. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. No. 55. This new agreement is being transmitted as a supplement to the existing agreement.

The supplement revises the transmission rates for making transmission capacity on the Unionville-Catskill-Pleasant Valley 115 KV transmission available to Central Hudson commencing November 28, 1986. Niagara requests waiver of the Commission's prior notice requirements in order to allow said agreement to become effective as of November 28, 1986.

Copies of the filing were served upon the following:

Central Hudson Gas and Electric Corporation, 284 South Avenue, Poughkeepsie, New York 12602.

Public Services Commission, State of New York, Three Empire State Plaza, Albany, New York 12223.

Any persons desiring to be heard or to protest said application should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practices and procedures (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 5, 1987. 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-29278 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-86-002]

Sabine Pipe Line Co.; Filing To Put Interim Rates Into Effect

December 24, 1986.

Take notice that on December 18, 1986, Sabine Pipe Line Company (Sabine) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1. Sabine requests a waiver of the Commission's § 154.22 notice requirements and proposes to implement the settlement rates of its First Revised Tariff Sheet No. 20 as interim rates until action is taken on the uncontested settlement in Docket No. RP86-86-000, which was certified to the Commission on December 18, 1986. The Staff and Sabine agreed in Article VII of the Stipulation and Agreement that Sabine could place the settlement rates and tariff sheets in effect as interim rates on December 1, 1986, the end of the suspension period in the Commission's June 30th Order. Sabine requests such waiver be granted since Sabine has commenced Order No. 436 transportation on December 13, 1986.

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. All such motions or protests should be filed on or before January 6, 1987. 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. 86-29272 Filed 12-30-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-118-000]

South Georgia Natural Gas Co.; Request Under Blanket Authorization

December 24, 1986.

Take notice that on December 9, 1986, South Georgia Natural Gas Company (South Georgia), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-118-000 a request pursuant to § 157.205 and § 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to reassign volumes of natural gas from one delivery point to another and to increase the contract delivery pressure at two delivery points under authorization issued in Docket No. CP82-548-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

South Georgia states that Atlanta Gas Light Company (Atlanta) provides natural gas service to the City of Valdosta, Georgia, and the surrounding area, by purchases it makes from South Georgia at three Valdosta, Georgia, delivery points in the currently effective service agreement between South Georgia and Atlanta dated November 1, 1973. South Georgia proposes to increase the existing contract delivery pressure at its Valdosta No. 3 delivery point in Land Lot No. 48 in the 11th Land District of Lowndes County, Georgia, to a pressure of not less than 200 nor more than 250 pounds per square inch. South Georgia also requests permission to increase the pressure at Valdosta No. 1, located in Land Lot No. 18 in the 12th Land District of Lowndes County, Georgia, to not less than 190 nor more than 200 pounds per square inch. South Georgia states that Atlanta has informed South Georgia that the increase in pressure will improve Atlanta's ability to maintain pressure on its distribution system, thereby enhancing the reliability of service to its customers in or near the Valdosta, Georgia area.

South Georgia also proposes to reassign the total maximum daily

qualtity (MDQ) provided for in the service agreement between Atlanta and South Georgia among the three delivery points. South Georgia proposes to reduce the MDQ at Valdosta No. 1 to 8,670 Mcf from 9,090 Mcf and to increase the MDQ at Valdosta Nos. 2 and 3 to 330 Mcf from 260 Mcf and to 500 Mcf from 150 Mcf, respectively. South Georgia states that the total volumes to be delivered to Atlanta after completion of the reassignment would not exceed the total volumes authorized prior to the reassignment so that the proposed activities would not be prohibited by any existing tariff of South Georgia. South Georgia also states that it has sufficient capacity to accomplish the deliveries proposed by the reassignment and increase in delivery pressure without detriment or disadvantage to South Georgia's other customers and without the need for additional facilities.

Any person or the Commission's staff may, within 45 days after 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. 86-29273 Filed 12-30-86; 8:45am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Week of December 1 Through December 5, 1986

During the week of December 1 through December 5, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: December 22, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

E.E. Tullos, Groveton, Texas, KEE-0073 Reporting Requirement

E.E. Tullos filed an Application for Exception from the provisions of Form EIA-782B. The request, if granted, would permit E.E. Tullos to be relieved of its requirement to file Form EIA-782B, entitled "Reseller'/Retailers' Monthly Petroleum Product Sales Report." On December 2, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 86-29282 Filed 12-30-86; 8:45 am]

BILLING CODE 6450-01-M

Southwestern Power Administration

Potential Availability of Temporary Power Sales

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of proposed policy regarding temporary power sales.

SUMMARY: The Southwestern Power Administration (SWPA), Department of Energy, markets Federal hydroelectric power (hydro capacity) and energy from projects constructed and operated by the Corps of Engineers located in the States of Arkansas, Missouri, Oklahoma and Texas, under the provisions of section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), as amended, in an area which includes the previously-mentioned States plus Kansas and Louisiana.

Since 1980, when SWPA adopted final power allocations, numerous additional public body and cooperative utility systems have indicated an interest in receiving an allocation of hydro capacity and energy from SWPA. While SWPA does not have any additional hydro power available for allocation at this time, SWPA has developed some revised operating criteria, including contract scheduling flexibility, which may result in hydro capacity, and possibly energy, being available for short periods of time to public body and cooperative utility systems in the SWPA marketing area. The revised operating criteria were developed and are explained in SWPA's Power Marketing Modification Study dated September 1985, which was prepared by SWPA's staff with substantial customer participation and was distributed to all customers after completion. Copies are available upon request.

Under this study, customers with temporary excesses of capacity may, at no financial gain, "loan" their allocated hydro capacity through SWPA to other customers which may be temporarily short of capacity or in need of replacing higher-priced thermal power. This initiative is intended to obtain the maximum use of Federal hydro capacity. An extension of this initiative is being made to provide for the availability of the energy associated with allocated hydro capacity "loaned," at the discretion of the allottee. This extension is a direct result of expressed customer interest. Some SWPA customers have indicated that amounts of allocated hydro capacity which exceed their immediate needs may be available for temporary sale to other utility systems.

Accordingly, SWPA hereby announces a proposed policy whereby existing SWPA customers may make allocated Federal hydro capacity and energy available to SWPA for temporary sale to others in the following priority: (1) Public body and cooperative utility systems who are present customers or potential customers (including joint action agencies and any other public body and/or cooperative utility organizations which may be able to distribute the benefits of Federal hydro power to such public body and cooperative utility systems) to be selected by SWPA based on the chronological receipt of written requests

for the "loaned" Federal hydro capacity and energy, and (2) utilities other than public body or cooperative utility systems, to be selected on the same basis if no public body or cooperative utility systems are available to purchase such power. Such potential customers must have, or be able to arrange, the transmission rights to receive the power.

SWPA will review the comments received in connection with this notice and make a decision regarding the proposed policy. If the proposed policy is determined to be desirable based on comments received, a subsequent notice will be published in the **Federal Register** advising interested parties to notify SWPA of their interest in (1) making their allocated federal hydro capacity and/or energy available to SWPA for short-term "loan" to other utility organizations and (2) making short-term purchases of "loaned" federal hydro capacity and/or energy.

ADDRESS: Written comments regarding this proposed policy and/or requests for copies of the SWPA Power Marketing Modification Study should be submitted to the Director, Power Marketing, Southwestern Power Administration, P.O. Box 1619, Tulsa, Oklahoma 74101. Written comments should be submitted no later than January 30, 1987.

FOR FURTHER INFORMATION CONTACT: Francis R. Gajan, Director, Power Marketing, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7529.

Issued in Tulsa, Oklahoma, this 16th day of December, 1986.

Ronald H. Wilkerson,

Administrator, Southwestern Power Administration.

[FR Doc. 86–29283 Filed 12–30–86; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[A–2–FRL–3136–1]

Prevention of Significant Deterioration of Air Quality; (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between July 1, 1986 and October 31, 1986, the United States Environmental Protection Agency (EPA), Region II Office, issued four final determinations and the New York State Department of Environmental Consolidated Permit Regulations (40 CFR Part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be at 40 CFR 52.21. In addition, this notice also announces two final PSD determinations issued by the NYSDEC that were inadvertently omitted from our previous **Federal Register** notice on PSD final actions.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264–4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the NYSDEC have made final determinations relative to the sources listed below:

Name of Applicant	Location	Project description	Reviewing agency	Final action	Date of final action
Pfizer, Inc.	Ticonderoga, New York.	Construction of a precipitated calcium carbonate plant.	NYSDEC	PSD Non-applicability Determination.	4/23/86
General Motors Corporation.	North Tarrytown, New York.	Replacement of existing topcoat facility.	NYSDEC	PSD Non-applicability Determination.	6/18/86
American Ref-Fuel Company of Hempstead.	Hempstead, New York.	Construction of 3 refuse-fired, mass-burn resource recovery incinerators.	NYSDEC	PSD Permit Approval.	7/20/86
The New York City Department of General Services.	Brooklyn, New York.	Construction of a cogeneration plant.	NYSDEC	PSD Non-applicability Determination.	8/6/86
Allen-Williams Corporation.	St. John, U.S. Virgin Islands.	Construction of two 900 KW diesel generators, one 600 KW diesel generator, and one incinerator.	EPA Region II	PSD Non-applicability Determination.	8/18/86
A.C.K. Corporation.	St. Thomas, U.S. Virgin Islands.	Construction of one 1400 KW diesel generator, one 600 KW Diesel generator and one 200 Hp Cleaver Brooks boiler.	EPA Region II	PSD Non-applicability Determination.	8/18/86
Eli Lilly Industries, Inc.	Carolina, Puerto Rico.	Construction of a 600 Hp boiler.	EPA Region II	PSD Non-applicability Determination.	9/30/86
Eli Lilly Industries, Inc.	Carolina, Puerto Rico.	Construction of a cogeneration plant.	EPA Region II	PSD Permit approval.	10/22/86

This notice lists only the sources that have received final PSD determinations. Copies of these determinations and related materials may be available for public inspection at the following offices:

EPA REGION II ACTIONS

United States Environmental Protection Agency, Region II Office, Permits Administration Branch, 26 Federal Plaza, Room 432, New York, New York 10278.

NYSDEC ACTIONS

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233–0001.

If available pursuant to the Conservation (NYSDEC) issued two final determinations pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register.** Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: December 10, 1986.

Christopher J. Daggett,

Regional Administrator.

[FR Doc. 86–29356 Filed 12–30–86; 8:45 am]

BILLING CODE 6560–50–M

[AAA-FRL-3135-8]

EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA master list of debarred, suspended, or voluntarily excluded persons.

SUMMARY: 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

DATE: This short list is current as of December 22, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Staff, Grants Administration Division, at (202) 475–8025.

Dated: December 17, 1986.

Thomas Hadd,

Acting Director, Grants Administration Division (PM–216).

EPA Master List of Debarred, Suspended and Voluntarily Excluded Persons

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
A.C. Lawrence Leather Company, Inc. (Danvers, MA)	83-0007-00	D	04-12-84	04-11-87	§ 32.200(a)(c)(i).
A.F. Beil Electric Company, Inc. (Youngstown, OH)	85-0014-00	D	06-27-85	06-26-88	§ 32.200(a).
Altman, Larry L. (Charleston, SC)	85-0063-03	S	07-29-85	Open	§ 32.300(b).
American Recovery Co., Inc. (Glen Burnie, MD)	86-0011-00	D	02-20-86	08-19-89	§ 32.200(f)(i).
Averill, Ernest Jr. (Fort Myers, FL)	83-0066-06	D	12-02-83	10-29-88	§ 32.200(b).
Azzil Trucking Co., Inc. (Roslyn, NY)	85-0008-02	D	09-11-86	09-10-89	§ 32.200(a)(b).
Barber, Lawrence (Hazelwood, NC)	83-0007-05	D	04-12-84	04-11-87	§ 32.200(a)(c)(i).
Barnum, James Charles (Utica, MI)	86-0010-01	D	12-10-85	12-09-88	§ 32.200(a).
Batzer Construction Co., Inc. (St. Cloud, MN)	85-0052-00	S	03-07-86	Open	§ 32.300(b).
Batzer, Bruce (St. Cloud, MN)	85-0052-01	S	03-07-86	Open	§ 32.300(b).
Batzer, Robert (St. Cloud, MN)	85-0052-02	S	03-07-86	Open	§ 32.300(b).
Beckham, Charles (Detroit, MI)	84-0030-02	D	02-24-86	07-30-89	§ 32.200(a)(b).
BECO, Inc. (High Point, NC)	85-0017-01	VE	12-10-85	12-09-88	§ 32.200(a)(3).
Bell, Bobby (Sulphur, LA)	85-0071-01	D	03-06-86	03-05-89	§ 32.200(a)(b).
Bell, Edwin (Sulphur, LA)	85-0071-02	D	03-06-86	03-05-89	§ 32.200(a)(b).
Blackwelder, Ray Martin (Concord, NC)	84-0011-01	D	06-27-85	06-26-88	§ 32.200(a).
Bowers, Darralyn (Detroit, MI)	84-0030-01	D	02-24-86	05-11-89	§ 32.200(a)(b).
Boyette, Willie Eugene (Wilson, NC)	83-0044-01	D	04-15-85	04-14-87	§ 32.200(a).
Bridges, William D., Jr. (Wilmington, NC)	85-0069-01	D	04-09-86	04-08-89	§ 32.200(a).
Cannady, Nathaniel Ellis (Asheville, NC)	86-0047-01	D	03-18-86	07-15-89	§ 32.200(a)(i).
Carson, Charles (Grosse Point Woods, MI)	85-0066-00	D	03-18-86	04-25-89	§ 32.200(b).
Carson, E. Eugene (Statesville, NC)	85-0004-01	D	01-06-86	01-05-89	§ 32.200(a).
City Chemicals Company, Inc. (Orlando, FL)	86-0038-02	D	10-02-86	11-23-89	§ 32.200(a)(i).
City Environmental Services, Inc. (Orlando, FL)	86-0038-03	D	10-02-86	11-23-89	§ 32.200(a)(1).
City Fuel Oil Company (Orlando, FL)	86-0038-05	D	10-02-86	11-23-89	§ 32.200(a)(1).
City Industries, Inc. (Orlando, FL)	86-0038-01	D	10-02-86	11-23-89	§ 32.200(a)(1).
Commonwealth Companies Incorporated (Lincoln, NE)	86-0100-01	S	11-12-86	Open	§ 32.200(a)(1).
Commonwealth Electric Company, Inc. (Lincoln, NE)	86-0100-00	S	09-09-86	Open	§ 32.300(b).
Cooney Construction Co., Inc. (Waucon, IA)	86-0062-00	S	03-18-86	Open	§ 32.300(b).
Crane Creek Asphalt, Inc. (Owatonna, MN)	86-0024-00	VE	09-04-86	09-03-87	§ 32.200(i).
Croft, William A. (Madison, WI)	83-0047-00	D	08-20-84	08-19-87	§ 32.200(a).
Cryer, John P. (Baton Rouge, LA)	85-0062-03	S	07-29-85	Open	§ 32.300(b).
Cummins Construction Company, Inc. (Enid, OK)	86-0069-00	S	09-08-86	Open	§ 32.300(b).
Cusenza, Sam (Ypsilanti, MI)	85-0024-02	D	02-24-86	04-02-89	§ 32.200(a)(b).
Cuti, Vincent J., Jr. (Huntington, NY)	83-0040-03	D	04-30-85	04-29-88	§ 32.200(a).
Dellinger, Theodore C. (Monroe, NC)	84-0012-01	VE	03-12-85	03-11-88	§ 32.200(a).
Dobson, Arthur A. (Lincoln, NE)	83-0030-01	D	08-30-85	04-18-87	§ 32.200(i).
Domanski, Gary Henry (Utica, MI)	86-0010-02	D	12-10-85	12-09-88	§ 32.200(a).
Driscoll, John William (Dundale, MD)	86-0011-02	D	10-15-86	10-14-89	§ 32.200(f)(i).
Dykes, Lamar D. (Nederland, TX)	85-0071-03	D	03-06-86	03-05-89	§ 32.200(a)(b).
Enmanco (Utica, MI)	86-0010-00	D	12-10-85	12-09-88	§ 32.200(a).
Environmental Management Corporation (Utica, MI)	86-0010-00	D	12-10-85	12-09-88	§ 32.200(a).
Fischback & Moore, Inc. (Dallas, TX)	84-0023-00	D	01-15-86	10-19-87	§ 32.200(a).
Floyd D. Stuckey & Associate (Winfield, KS)	84-0028-00	D	08-26-85	08-25-88	§ 32.200(a).
Foley, Bancroft T. (Washington, DC)	86-0004-03	D	03-07-86	03-06-89	§ 32.200(a).
Franklin Wiring Co. (Youngstown, OH)	85-0044-00	D	09-04-85	09-03-88	§ 32.200(a)(3).
FSA Engineering Consultants (Winfield, KS)	84-0028-00	D	08-26-85	08-25-88	§ 32.200(a).
Geuther, Herbert G. (Philadelphia, PA)	86-0004-04	D	03-07-86	03-06-89	§ 32.200(a).
Goodspeed, Robert (North Hampton, NH)	83-0007-02	D	04-12-84	04-11-87	§ 32.200(c)(i).
Graves, George William (Wilmington, NC)	85-0069-02	D	03-05-86	03-04-89	§ 32.200(a).
Greer, Arthur (Maitland, FL)	86-0038-00	D	10-02-86	11-23-89	§ 32.200.
Gross, William R. (Big Spring, TX)	86-0002-01	D	10-06-86	10-05-89	§ 32.200(a).
Hansen, Leonard A. (St. Peter, MN)	85-0019-02	D	09-26-85	09-25-88	§ 32.200(a)(3).
Hector Construction Co., Inc. (Caledonia, MN)	85-0056-00	S	03-18-86	Open	§ 32.300(b).
Herring, Donald W. (Wilson, NC)	83-0044-01	D	10-11-84	10-10-87	§ 32.200(a).
Hi-Way Surfacing, Inc. (Marshall, MN)	85-0053-00	D	12-17-85	12-16-88	§ 32.200(a)(3).
Hochreiter, Herbert (Roslyn, NY)	85-0008-01	D	09-11-86	09-10-89	§ 32.200(a)(b).
Hodges Electric Company (Wilmington, NC)	85-0070-00	D	04-04-86	04-03-89	§ 32.200(a).
Hopper, Thomas G. (Bedford, MA)	86-0095-03	S	06-24-86	Open	§ 32.200(b).
Howard P. Foley, Company (Washington, DC)	86-0004-00	D	03-07-86	03-06-89	§ 32.200(a).
Hugo Schulz, Inc. (Lakefield, MN)	85-0047-00	D	05-01-86	04-30-89	§ 32.200(a).
Insultation Specialty and Supply, Inc. (Cleveland, OH)	84-0025-00	D	10-04-84	10-03-87	§ 32.200(c)(i).
J.A. LaPorte, Inc. (Arlington, VA)	86-0037-00	D	08-29-86	08-28-89	§ 32.200(a)(3).
Jerlow, John A. (Lakefield, MN)	85-0047-02	D	05-01-86	04-30-89	§ 32.200(a).
Jerpbak, Daniel R. (Owatonna, MN)	86-0024-01	D	09-25-86	09-24-89	§ 32.200(i).
Johnson, C. Theodore (Indianapolis, IN)	84-0023-04	D	03-04-86	03-03-89	§ 32.200(a)(f).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
Johnson, Richard (Hinsdale, NH)	83-0007-03	D	04-12-84	04-11-87	§ 32.200(c)(i).
Jopel Contracting & Trucking Corporation (Bronx, NY)	85-0022-00	S	07-30-85	Open	§ 32.200(b).
Komatz Construction Co., Inc. (St. Peter, MN)	85-0019-00	D	09-26-85	09-25-88	§ 32.200(a)(3).
Komatz, Thomas P. (St. Peter, MN)	85-0019-01	D	09-26-85	09-25-88	§ 32.200(a)(3).
Krueger, Joseph (Cleveland, OH)	84-0025-01	D	10-04-84	10-03-87	§ 32.200(c)(i).
Kruse, Lloyd C. (Lakefield, MN)	85-0047-01	D	05-01-86	04-30-89	§ 32.200(a).
Law, David P. (Greenwell Springs, LA)	85-0064-00	S	07-29-85	Open	§ 32.300(b).
Law, Theresa McBeth (Greenwell Springs, LA)	85-0064-01	S	07-29-85	Open	§ 32.300(b).
Lee, Herbert P., III (Sumter, SC)	84-0013-01	VE	02-14-85	12-31-87	§ 32.200(a).
Lench, Frank P. (Lafayette, CA)	86-0004-01	D	03-07-86	03-06-89	§ 32.200(a).
Leyendecker Highway Contractors, Inc. (Laredo, TX)	86-0014-00	D	07-17-86	03-25-88	§ 32.200(a).
Lizza Industries, Inc. (Roslyn, NY)	85-0008-00	D	09-11-86	09-10-89	§ 32.200(a)(b).
Lofgren, Sven (Lincoln, NE)	87-0014-01	S	11-12-86	Open	§ 32.200(i).
Marshall, Weymouth (Gloucester, MA)	83-0007-01	D	04-12-84	04-11-87	§ 32.200(c)(i).
Masselli, William P. (Bronx, NY)	85-0022-02	S	07-30-85	Open	§ 32.300(b).
McDowell Contractors, Inc. (Nashville, TN)	84-0014-00	VE	12-23-85	12-22-88	§ 32.200(a).
McGonagle, Joseph D. (Everett, MA)	86-0041-01	VE	11-17-86	11-16-87	§ 32.200(a).
Midhampton Asphalt (Roslyn, NY)	85-0008-03	D	09-11-86	09-10-89	§ 32.200(a)(b).
Modern Electric Co. (Statesville, NC)	85-0004-00	D	01-06-86	01-05-89	§ 32.200(a).
Moore, Gray E. (Jr.) (Greenwood, SC)	86-0108-00	D	08-19-86	08-18-89	§ 32.200.
Moorehead, Dennis L. (Graniteville, SC)	84-0006-01	D	01-11-85	01-10-88	§ 32.200(a).
Moorse, Lawrence (Marshall, MN)	85-0053-01	D	12-17-85	12-16-88	§ 32.200(a)(3).
Municipal & Industrial Pipe Services, Ltd. (Douglasville, GA)	82-0601 82-0408	D	10-07-82	02-16-87	§ 32.200(b)(c)(e)(i).
Mystic Bituminous Products Company, Inc. (Everett, MA)	86-0041-00	VE	11-17-86	11-16-87	§ 32.200(a).
Newt Solomon, Inc. (Nashville, TN)	85-0058-00	D	10-10-85	10-09-88	§ 32.200(e)(i).
Owens, Jerry B. (Southfield, MI)	85-0065-00	D	02-24-86	03-26-89	§ 32.200(b).
Peterson, Roger A. (Cloquet, MN)	85-0054-02	D	02-25-86	01-31-87	§ 32.200(a).
Pinney, J.A. Bruce (Bala Cnywyd, PA)	84-0023-06	D	01-15-86	03-03-89	§ 32.200(a)(f).
Pipeline Renovation Service, Inc. (Tacoma, WA)	86-0078-00	D	07-02-86	08-07-89	§ 32.200(c)(i).
Regenscheid, Charles E. (St. Peter, MN)	85-0019-03	VE	12-19-85	12-18-87	§ 32.200(a)(3).
Resource Conservation & Recovery of America, Inc. (Orlando, FL)	86-0038-04	D	10-02-86	11-23-89	§ 32.200(a)(i).
Rio Grande Construction Company (Bunkie, LA)	85-0063-00	S	07-29-85	Open	§ 32.300(b).
Rogers, Joseph J. (Pittsburgh, PA)	86-0004-02	D	03-07-86	03-06-89	§ 32.200(a).
Rothrock Construction, Inc. (Murrells Inlet, NC)	83-0064-00	D	05-17-84	05-16-87	§ 32.200(a).
Rothrock, Steve D. (Murrells Inlet, NC)	83-0064-01	D	05-18-84	05-17-87	§ 32.200(a).
Ruggles, Myron R. (Berlin Center, OH)	85-0016-02	VE	07-09-85	01-08-87	§ 32.200(a).
Rupp Construction Company, Inc. (Slayton, MN)	85-0048-00	D	07-17-86	07-16-89	§ 32.200(a).
Rupp, Douglas (Slayton, MN)	85-0048-01	D	07-17-86	07-16-89	§ 32.200(a).
Sarandos, Constantino (Gus) (Tacoma, WA)	86-0078-02	D	07-02-86	08-07-89	§ 32.200(c)(i).
Sarandos, Dolores K. (Tacoma, WA)	86-0078-01	D	07-02-86	08-07-89	§ 32.200(c)(i).
Sarandos, George (Tacoma, WA)	86-0078-03	D	07-02-86	08-07-89	§ 32.200(c)(i).
Sargent, Frederic B. (Pittsburgh, PA)	85-0020-01	VE	07-26-85	02-12-87	§ 32.200(a)(3).
Saunders, George F. (High Point, NC)	85-0017-02	VE	12-10-85	12-09-88	§ 32.200(a)(3).
Sauseda, Roy (Bunkie, LA)	85-0063-02	D	07-29-85	10-13-89	§ 32.200(a)(i).
Schorr, Paul C., III (Lincoln, NE)	87-0014-00	S	11-12-86	Open	§ 32.200(i).
Schutze, Leland (Caledonia, MN)	85-0056-01	S	03-18-86	Open	§ 32.300(b).
Seale, Leonard M. (Bedford, MA)	86-0095-02	S	06-24-86	Open	§ 32.300(b).
Slattery, Edward J. (Youngstown, OH)	85-0015-01	D	09-15-85	03-14-87	§ 32.200(a)(3).
Smith, Paul F. (Lakefield, MN)	85-0047-03	D	05-01-86	04-30-89	§ 32.200(a).
Solomon, Newt (Nashville, TN)	85-0058-01	D	10-07-85	10-06-88	§ 32.200(e)(i).
Stone, Francis (Swanzey, NH)	83-0007-04	D	04-12-84	04-11-87	§ 32.200(a)(c)(i).
Stuckey, Floyd D. (Winfield, KS)	84-0028-01	D	08-26-85	08-26-88	§ 32.200(a).
Tow Brothers Construction, Company (Fairmont, MN)	85-0054-00	D	01-22-86	01-21-89	§ 32.200(a).
Tow, James (Fairmont, MN)	85-0054-01	D	01-22-86	01-21-89	§ 32.200(a).
Toy, Daniel Lee (Utica, MI)	86-0010-03	D	12-10-85	12-09-88	§ 32.200(a).
Tubre Enterprises (Bunkie, LA)	85-0062-01	S	07-29-85	Open	§ 32.300(b).
Tubre Enterprises, Inc. (Bunkie, LA)	85-0062-00	S	07-29-85	Open	§ 32.300(b).
Tubre, Charles (Baton Rouge, LA)	85-0062-02	S	07-29-85	Open	§ 32.300(b).
Tubre, Thomas (Bunkie, LA)	85-0063-01	S	07-29-85	Open	§ 32.300(b).
Tucker Brothers Contracting Co. (Pell City, AL)	83-0061-00	D	11-26-84	11-25-87	§ 32.200(a).
Tucker, Harold Ray (Pell City, AL)	83-0061-02	D	11-26-84	11-25-87	§ 32.200(a).
Tucker, Kenneth W. (Pell City, AL)	83-0061-01	D	11-26-84	11-25-87	§ 32.200(a).
Twedell, David Bruce (Gainesville, FL)	83-0020-01	D	08-30-85	08-29-87	§ 32.200(a).
Ulland Brothers, Inc. (Cloquet, MN)	85-0054-00	D	02-25-86	01-31-87	§ 32.200(a).
Ulland, Robert O. (Cloquet, MN)	85-0054-01	D	02-25-86	01-31-87	§ 32.200(a).
Universal Engineering & Supply, Inc. (Sulphur, LA)	85-0071-00	D	03-06-86	03-05-89	§ 32.200(a)(b).
Universal Engineering (Sulphur, LA)	85-0071-05	D	03-06-86	03-05-89	§ 32.200(a)(b).
Universal Wheels, Inc. (Sulphur, LA)	85-0071-06	D	03-06-86	03-05-89	§ 32.200(a)(b).
Valentini, Joseph (Ypsilanti, MI)	85-0024-01	D	02-24-86	04-02-89	§ 32.200(a)(b).
Vryenhoek, Ralph D. (Pittsburgh, PA)	85-0020-02	VE	07-26-85	02-13-87	§ 32.200(a)(3).
W.V. Pangborne & Co., Inc. (Bala Cynwyd, PA)	84-0023-05	D	01-15-86	10-19-87	§ 32.200(a)(f).
Watson Electrical Construction Co. (Wilson, NC)	83-0044-00	D	04-15-85	04-14-87	§ 32.200(a).
Watson-Flagg Electric, Co., Inc. (Indianapolis, IN)	84-0023-03	D	04-28-86	10-19-87	§ 32.200(a).
Williams, G. Marvin (Asheville, NC)	86-0047-02	D	03-18-86	07-15-89	§ 32.200(i).
Wirt, David (Douglasville, GA)	82-0601 82-0408	D	10-07-82	02-16-87	§ 32.200(b)(c)(e)(i).
Wirt, Gordon D. (Douglasville, GA)	82-0408	D	12-07-82	02-16-87	§ 32.200(c)(e).
Wirt, Judith C. (Douglasville, GA)	82-0408	D	12-07-82	02-16-87	§ 32.200(c)(e)(i).
Wolverine Disposal, Inc. (Ypsilanti, MI)	85-0024-00	D	02-24-86	04-02-89	§ 32.200(a)(b).
Young, Frank Paul (Sr.) (Glen Burnie, MD)	86-0011-01	D	08-20-86	08-19-89	§ 32.200(f)(i).

[1] D = Debarred; S = Suspended; VE = Volunarily Excluded.

[FR Doc. 86-29357 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3136-2]

Chesapeake Bay Executive Council; Open Meeting

The Chesapeake Bay Executive Council established in accordance with the Chesapeake Bay Agreement of December 1983, will be held from 9:30 a.m. to 3:00 p.m. on January 22, 1987, at the Virginia Marine Science Museum, 717 General Booth Boulevard, Virginia Beach, Virginia. This notice is published pursuant to section 10(a)(2) of Pub. L. 92-463, "The Federal Advisory Committee Act."

The agenda of the quarterly council meeting will include, but will not be limited to:

1. Approve minutes from October 16, 1986 meeting.
2. Communications Strategy.
3. Citizen Advisory Committee—Quarterly Report to the Executive Council.
4. Planning Process—Phase II.
5. Recommendations on controlling Tributyltin hull plants.
6. Executive Council Governance Issues.
7. New Business.

Comments from the public will be welcomed at the end of the meeting as time permits. Questions about the meeting may be directed to Ms. Patricia Bonner, U.S. EPA, Chesapeake Bay Liaison Office, Annapolis City Marina, Suite 109-110, Annapolis, Maryland 21403. The telephone number is: Area 301/266-6863.

Dated: December 19, 1986.

Charles S. Spooner,

Director, Chesapeake Bay Liaison Office.

[FR Doc. 86-29358 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180711; FRL-3136-5]

Emergency Exemptions; Metalaxyl, Etc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pest in the two States listed below, a public health exemption to Montana, and one quarantine exemption to the U.S. Department of Agriculture (USDA/APHIS). Also listed are three crisis exemptions initiated by three States and two denials of request for specific exemptions from the Florida Department of Agriculture and Consumer Services, and the Virginia Department of Agriculture and Consumer Services. The exemptions, issued of Agriculture and Consumer Services. The exemptions, issued during the months of October, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, public health, quarantine, and crisis for its effective date.

FOR FURTHER INFORMATION CONTACT: See each exemption for the name of the contact person. The following information applies to all contact people: By mail:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of metalaxyl on blueberries to control phytophthora; October 2, 1986 to April 30, 1987. (Jim Tompkins)

2. California Department of Food and Agriculture for the use of methiocarb on artichokes to control snails and slugs; October 10, 1986 to December 31, 1986. (Jack E. Housenger)

EPA has granted a public health exemption to the Montana Department of Livestock for the use of strychnine in eggs to control rabid skunks; November 6, 1986 to November 5, 1987. A notice of receipt and solicitation of public comment was published in the **Federal Register** of October 8, 1986 (51 FR 36061); no comments were received. The Agency found that the conditions outlined in the **Federal Register** notice of June 13, 1986 (51 FR 21617) had been met, and an emergency situation could exist. (Jim Tompkins)

EPA issued a quarantine exemption to the United States Department of Agriculture (USDA/APHIS) for the use of methyl bromide on various foods and feed commodities to control quarantine pests; November 7, 1986 to November 6, 1989. (Jim Tompkins)

Crisis exemptions were initiated by the:

1. Florida Department of Agriculture and Consumer Services on October 27, 1986, for the use of sodium chlorate on southern peas to control volunteer corna and several other weeds and to aid in the harvest of peas. Since it was anticipated that this program would be needed for more than 15 days, Florida requested a specific exemption to continue it. The need for this program is expected to last until December 15, 1986. (Libby Pemberton)

2. Iowa Department of Agriculture on October 6, 1986, for the use of sodium chlorate on dry edible beans as a desiccant. The need for this program has ended. (Jim Tompkins)

3. Michigan Department of Agriculture on September 22, 1986, for the use of sodium chlorate on dry edible beans as a desiccant. The need for this program has ended. (Jim Tompkins)

EPA has denied specific exemptions requested by:

1. Florida Department of Agriculture and Consumer Services for the use of triflumizole on spathiphyllums to control cylindrocladium. A notice of receipt of this request was published in the **Federal Register** of August 20, 1986 (51 FR 29694). The Agency has denied this request because it had insufficient data to make a determination of the safety of the proposed use. (Jim Tompkins)

2. Virginia Department of Agriculture and Consumer Services for the use of a dichlorprop on apples to control premature abscission. A notice of receipt of this request was published in the **Federal Register** of August 28, 1986 (51 FR 30705). The Agency has denied this request because of unresolved questions concerning the oncogenic potential of dischlorprop. (Jim Tompkins)

Authority: 7 U.S.C. 136.

Dated: December 19, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-29359 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-64008; FRL-3135-5]

Intent To Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to cancel.

SUMMARY: EPA is issuing a notice of intent to cancel certain pesticide registrations under section 6(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The registrations which the Agency intends to cancel are held by registrants whom the Agency, after a good faith effort, has

been unable to contact. Persons adversely affected by this notice may request a hearing in accordance with the provisions of 40 CFR Part 164.

DATES: All registrations will be cancelled at the end of 30 days from the date of publication or receipt of this notice by registrants, unless a hearing has been requested by a person adversely affected by this notice, or the Agency is provided with a correct and current address of an affected registrant.

A request for a hearing by an affected registrant or the registrant's correct and current address must be received by the Agency on or before January 30, 1987, or 30 days after receipt by mail by the affected registrant of this notice, whichever is the later date.

A request for a hearing submitted by any other adversely affected person must be received on or before January 30, 1987.

ADDRESS: Hearing requests must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:
By mail: Stanley J. Austin, Registration Support and Emergency Response Branch, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Office location and telephone number: Room 716C, Crystal Mall Building number 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–4360).

SUPPLEMENTARY INFORMATION: Over the years, EPA has been unable to contact certain pesticide registrants at the addresses on file at the Agency or appearing on current pesticide product labels. EPA's inability to communicate with these registrants impairs the Agency's ability to discharge its statutory mandate to regulate pesticide products and their impact on the environment. Furthermore, it creates an undesirable situation in that some registrants may unknowingly be in violation of the Act and escape burdens assumed by other registrants in compliance with the Act.

Section 6(b) of FIFRA allows the Administrator to issue a notice of intent to cancel a pesticide's registration if that ". . . pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act. . . .>

Section 3(c)(1)(A) of FIFRA and 40 CFR 162.10(a)(1)(ii) make it a condition of registration that a registrant's address be filed with the Agency and appear on the label of the registrant's pesticide product. In addition, section 12(a)(1)(E) of FIFRA makes it unlawful to distribute, sell, offer for sale, hold for sale, ship, deliver or offer for delivery to any person a misbranded pesticide. Under FIFRA section 2(q)(2)(C)(i), failure to have the registrant's correct address on the label of its pesticide product constitutes misbranding. Therefore, failure of a registrant to submit a correct and current address and include such address as part of the label of its pesticide products is in violation of the Act's provisions and is grounds for cancellation of that registrant's registrations.

EPA issued a policy statement, published in the **Federal Register** of March 5, 1986 (51 FR 7634), indicating that the Agency may decide to initiate cancellation proceedings for registrations held by registrants whom the Agency has, after good faith efforts, been unable to contact by mail. This notice implements that policy.

This notice will be sent to all affected registrants by certified mail to the most current addresses the Agency has in its files. For the purposes of this notice, the Agency will consider validated non-delivery as receipt and the date of validated non-delivery as the date of receipt in those instances where actual receipt is not accomplished.

The impact of these cancellations on the agricultural economy is difficult to determine. It is believed that some or all of the pesticide products subject to this cancellation action are no longer on the market. Some of the pesticide products have no agricultural uses. At worst, the impact on the agricultural economy is expected to be slight.

Pursuant to section 6(b), the Secretary of Agriculture has reviewed this notice and has no comments. The Science Advisory Panel has waived its right (under section 25(d)) to review this notice.

Registrations Subject to Cancellation

The following registrations are subject to cancellation under this notice.

Registrant	Registration Nos.
Aidex Corporation, I–29 & Hwy 370, Council Bluffs, IA 51501.	1029–6755.
Arizona Sulphur Company, 5340 West Bethany Home Rd., Box 863, Glendale, AZ 85311.	35377–01, 35377–02, 35377–5663, 35377–5664, and 35377–7184.
Atomic Chemical Company, Box 1111, Spokane, WA 99210.	6152–03 and 6152–04.
Dooremus Chemical Company, 639 East 19th Street, Paterson, NJ 07514.	33013–01.
Dunham Company, 9425 Gidley Street, Temple City, CA 91780.	19215–01 and 19215–02.
Dyna Chemical Corporation, 56 Lincoln Highway, Penndel, PA 19047.	14799–01, 14799–02, and 14799–03.
Eco Chemical, Inc., P.O. Box 51476, New Orleans, LA 70151.	17870–01.
Ecology Interprises, Ltd., No. 5 Industrial Park, Haverstraw, NY 10926.	34761–02 and 34761–07
Eisele & Company, Inc., Subs of Shulton Inc., Nashville, TN 37208.	20062–01.
Enfield Enterprises, Inc., P.O. Box 5024, Esmond, RI 02917.	32341–01.
Environment Engineering, Inc., 1310 Headquarter Drive, Greenboro, NC 27405.	13442–01, 13442–10, 13442–11, 13442–12, 13442–13, 13442–14, and 13442–15.
Environmental Laboratories, Inc., 2304 Gulf Life Tower, Jacksonville, FL 32207.	15599–01.
Environment 2000, Ltd., 924 4th Ave. South, P.O. Box 239, Denison, IA 51442.	12454–01.
Fast Kill Pest Control Co., 18216 W. Seven Mile Rd., Detroit, MI 48219.	46481–01.
Feedwaters, Inc., 340 Evelyn Street, Paramus, NJ 07652.	11696–01, 11696–02, and 11696–03.
Flexo Chemical & Distributing Co., 47 Hartford Pike, Shrewsbury, MA 01545.	33281–01, 33281–02, and 33281–03.
Florasan Corporation, 9424 Roosevelt Way, NE., Seattle, WA 98115.	13370–7476, 13370–7477, and 13370–7478.
Folino Industries, Inc., P.O. Box 218, Winooski, VT. 05404.	42764–01 and 42764–02.
G & G Chemical Co., Inc., 1333 Van Dyke Avenue, San Francisco, CA 94124.	25581–01, 25581–02, 25581–03, 25581–04, 25581–07, and 25581–12.
Ghost Maker Products, 8928 W. 24th Street, Los Angeles, CA 90034.	35575–9553.
Gilbert Chemical Co., Bellville, NJ 07109.	33133–01.
Grain Conditioners, Inc., 2622 Poydras St., New Orleans, LA 70119.	10203–01.
Grove Chemicals, 2035 Fern Circle, Leesburg, FL 32748.	35308–9130.
Growers Service Company, P.O. Box 628, Watsonville, CA 95076.	11034–4486 and 11034–10097.
Hennigan Engineering Co., Inc., P.O. Box 430, Mansfield, MA 02048.	18876–01.
Highcourt Sales Company, P.O. Box 26090, Pasadena, CA 91105.	30322–01.
Hi-plains Sprayers, Inc. 701 S. Smokey Hill, Oakley, KS 67748.	35965–04 and 35965–3007.
Hollywood Laboratory Company, 1009 South 21st Avenue, Hollywood, FL 33020.	13473–9208.
Holt Mfg. Company, 2615 Fifth Ave. S., Birmingham, AL 35233.	16454–01.
Howland Chemical Products, Inc., 160 Passaic Avenue, Kearny, NJ 07032.	19673–03.
Imperial Pools & Supplies, 307 W. Genessee Street, Auburn, NY 13021.	46133–01.
Interiors By Marie, 6601 Norwood Ave., Jacksonville, FL 32208.	52500–01.
James W. Nielsen, 437 NE. 10th Street, Newport, OR 97365.	50019–01.
J.H. Robinson Exterminating Co., 2138 83rd Street, Cleveland, OH 44103.	36383–10343, 36383–10344, and 36383–10345.
J.W.T. Industry, P.O. Box 232, West Chicago, IL 60185.	21145–01 and 21145–03.
Kaiser/Naylor Nautical Research Company, 2503 McCue 7, Houston, TX 77027.	29774–01.
Kelles Energy Systems, Inc., 300 Maple Ave., South Plainfield, NJ 07080.	45993–01 and 45993–02.
Key Chemical Company, 669 Elmwood Ave., Providence, RI 02907.	32181–01.
Key 11 Chemical Company, 2682 Ventura Blvd., Camarillo, CA 93010.	11068–9171, 11068–9173, 11068–9174, 11068–9175, and 11068–9176.
Khan Laboratories, 639 W. Diversey Parkway, Chicago, IL 60614.	11324–01 and 11324–02.

Registrant	Registration Nos.
Killrat Corporation, 400 N. 7th Street, Phoenix, AR 85014.	10741-01.
Kingwell Chemical, 3434 Browns Mill Rd. SE, Atlanta, GA 30315.	14157-01, 14157-02, and 14157-03.
Knud's Pool Service, Inc., 301 Dalton Avenue, Pittsfield, MA 01247.	36479-01.
Kremer I.B. Company, P.O. Box 221, Southfield, MI 48037.	13683-07 and 13683-08.
La Quinoleine S.A., c/o Registration Consulting Associates, 127 Crestmoor Circle, Pacifica, CA 94044.	42567-01 and 42567-02.
Lloyd's Pool & Patio Shop, 1821 West Brandon Blvd., Brandon, FL 33511.	50767-01.
Looms Chemical Company, 2011 N. Columbia Blvd., P.O. Box 17342, Portland, OR 97217.	39769-01.
LRC Research & Development Company, Inc., 1703 Concord Pike, Wilmington, DE 19803.	34250-01.
Manchester Corporation, 521 Commerce Drive, Largo, FL 33540.	36226-9793, 36226-10370, and 36226-10371.
Marxone, Inc., P.O. Box 1949, Tifton, GA 31794.	44317-01, 44317-02, 44317-03, 44317-04, 44317-05, 44317-08, 44317-13, 44317-14, 44317-15, 44317-16, 44317-17, 44317-18, 44317-19, 44317-21, 44317-22, 44317-23, 44317-24, 44317-25, 44317-26, 44317-30, 44317-32, 44317-33, 44317-35, 44317-38, 44317-39, 44317-40, 44317-42, 44317-43, and 44317-46.
National Chemical, Inc., 940 W. Oakwood Road, Oak Creek, WI 53154.	36371-01.
NHR Chemical Corporation, 9601 Katy Freeway, Suite 400, Houston, TX 77024.	46390-01, 46390-02, 46390-03, 46390-04, 46390-05, and 46390-06.
Nox-weed, Inc., 6842 E. Live Oak Street, Bell Gardens, CA 90202.	11112-9635, 11112-9636, 11112-9637, 11112-9638, and 11112-9639.

Dated: December 17, 1986.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-29159 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59799; FRL-3136-6]

Certain Chemical Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seventeen such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 87-63, 87-64, 87-65, 87-66, 87-67 and 87-68—January 1, 1987.
Y 87-69 and 87-70—January 4, 1987.
Y 87-71—January 5, 1987.
Y 87-72, 87-73, 87-75, 87-76 and 87-77—January 6, 1987.
Y 87-78 and 87-79) January 7, 1987.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: Effective with this notice, a nonsubstantive change in format is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act. Toxicity data will only appear in the notice when submitted with the PMN. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-63

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (S) Conversion varnish vehicle (polywood finish). Prod. rang: 45,450 to 68,200 kg/yr.

Y 87-64

Manufacturer. Confidential.
Chemical. (G) Modified ethylene-butyl acrylate copolymer.
Use/Production. (S) Commercial hot melt adhesive tie-layer in multi-layer film constructions. Prod. range: Confidential.

Y 87-65

Manufacturer. Confidential.
Chemical. (G) Modified ethylene-butyl acrylate polymer.
Use/Production. (S) Commercial hot melt adhesive tie-layer in multi-layer film constructions. Prod. range: Confidential.

Y 87-66

Manufacturer. Confidential.
Chemical. (G) Ethylene terpolymer.
Use/Production. (S) Commercial component of packaging hot melt adhesive; tie coat for co-extruded film; extrusion lamination for metal/plastic. Prod. range: Confidential.

Y 87-67

Manufacturer. Confidential.
Chemical. (G) Modified ethylene-vinyl acetate polymer.
Use/Production. (S) Commerical component of packaging hot melt adhesive; tie coat for co-extruded film; extrusion lamination for metal/plastic. Prod. range: Confidential.

Y 87-68

Manufacturer. Confidential.
Chemical. (G) Modified polyethylene.
Use/Production. (S) Commercial saturation wax component, component of packaging hot melt adhesive; polymer intermediate. Prod range: Confidential.

Y 87-69

Manufacturer. Confidential.
Chemical. (G) Alkyd co-polymer.
Use/Production. (G) Binder in coatings. Prod. range: Confidential.

Y 87-70

Manufacturer. Confidential.
Chemical. (G) Oil modified polyester.
Use/Production. (G) Binder in coatings. Prod. range: Confidential.

Y 87-71

Manufacturer. Confidential.
Chemical. (S) 7-oxabicyclo [4.1.0.]heptane-3-carboxylic acid, 7-oxabicyclo[4.1.0]-hept-3-ylmethylester, Tall-oil fatty acids, Pamolyn 380 tall-oil fatty acids, 2-methyl-2-propenoicacidmethylester, 2-propenoic acid, 1,1-dimethylethyl hydroperoxide, N,N-diethyl-ethanamine.
Use/Production. (G) Industrial polymer used as the major vehicle component of a protective coating (paint) formulated for use on metal substrates.

Y 87-72

Manufacturer. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Printing inks. Prod. range: Confidential.

Y 87-73

Manufacturer. General Electric Company.
Chemical. (G) Carbonic acid and 1,3-(and/or 1,4-)benzenedicarboxylic acid.

copolymer with 4,4'-(1-methylethylidene) bis(phenol) and hydroxy arene.

Use/Production. (G) Plastic components for electrical devices, for medical devices, for business machines, for information storage devices, for automobiles and for housewares. Prod. range: Confidential.

Y 87-74

Manufacturer. General Electric Company.

Chemical. (G) Carbonic acid and 1,3-(and/or 1,4-)benzenedicarboxylic acid, copolymer with 4,4'-(1-methylethylidene) bis(phenol) and 4-alkylphenol.

Use/Production. (G) Plastic components for electrical devices, for medical devices, for business machines, for information storage devices, for automobiles and for housewares. Prod. range: Confidential.

Y 87-75

Manufacturer. General Electric Company.

Chemical. (G) Carbonic acid and 1,3-(and/or 1,4-)benzenedicarboxylic acid, copolymer with 4,4'-(1-methylethylidene) bis(phenol) and 4-aralkylphenol.

Use/Production. (G) Plastic components for electrical devices, for medical devices, for business machines, for information storage devices, for automobiles and for housewares. Prod. range: Confidential.

Y 87-76

Manufacturer. General Electric Company.

Chemical. (G) Carbonic acid and 1,3-(and/or 1,4-)benzenedicarboxylic acid, copolymer with 4,4'-(1-methylethylidene) bis(phenol) and 4-arcycloalkylphenol.

Use/Production. (G) Plastic components for electrical devices, for medical devices, for business machines, for information storage devices, for automobiles and for housewares. Prod. range: Confidential.

Y 87-77

Manufacturer. General Electric Company.

Chemical. (G) Poly(oxy-1,4-butanediyloxycarbonyl-1,4-phenylene carbonyl) reaction product with hexa substituted heteromonocycle.

Use/Production. (S) Site-limited intermediate for manufacture of polymer product and industrial, commercial and consumer electric/electronic automotive and consumer goods. Prod. range: Confidential.

Y 87-78

Manufacturer. Westinghouse Electric Corporation.

Chemical. (G) Polyamide-imide polymer.

Use/Production. (S) Industrial wire enamel insulation to be applied to magnet wire and electrical insulating varnish for application on motors, generators and/or transformer. Prod. range: 50,000 to 100,000 kg/yr.

Y 87-79

Importer. Dynamit Nobel Chemicals.

Chemical. (G) Polyester resin of aryl dicaboxylic acids, alkane diols and ester.

Use/Import. (S) Industrial base for coil-coating paint for outdoor exposure. Import range: Confidential.

Dated: December 23, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86-29360 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51655; FRL-3136-7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-five such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87-325 and 87-326—March 11, 1987.

P 87-327, 87-328, 87-329, 87-330, 87-331, 87-332, 87-333 and 87-334—March 14, 1987.

P 87-335, 87-336, 87-337, 87-338, 87-339, 87-340, 87-341, 87-342, 87-343, 87-344, 87-345, 87-346, 87-347, 87-348, 87-349, 87-350, 87-351, 87-352, 87-353, 87-354, 87-355, 87-356, 87-357, 87-358, 87-359, 87-360 and 87-361—March 15, 1987.

P 87-362, 87-363, 87-364, 87-365, 87-366, 87-367 and 87-368—March 16, 1987.

P 87-369—March 17, 1987.

Written comments by:

P 87-325 and 87-326—February 9, 1987.

P 87-327, 87-328, 87-329, 87-330, 87-331, 87-332, 87-333 and 87-334—February 12, 1987.

P 87-335, 87-336, 87-337, 87-338, 87-339, 87-340, 87-341, 87-342, 87-343, 87-344, 87-345, 87-346, 87-347, 87-348, 87-349, 87-350, 87-351, 87-352, 87-353, 87-354, 87-355, 87-356, 87-357, 87-358, 87-359, 87-360 and 87-361—February 13, 1987.

P 87-362, 87-363, 87-364, 87-365, 87-366, 87-367 and 87-368—February 14, 1987.

P 87-369—February 15, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS-51655]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: Effective with this notice, a non-substantive change in format is being initiated for information published under sections 5(d)(2) and 5(h)(6) of the Toxic Substances Control Act. Toxicity data will only appear in the notice when submitted with the PMN. Exposure and environmental release/disposal information will no longer be published in the notice. The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87-325

Manufacturer. Confidential.

Chemical. (G) Poly (isobutenyl)alkanolamine succinimide.

Use/Production. (G) Gasoline additive. Prod. range: Confidential.

P 87-326

Importer. MTC America, Incorporated.

Chemical. (G) Dimethyl/imidazolidinone.

Use/Import. (S) Solvent. Import range: Confidential.

P 87-327

Manufacturer. Confidential.

Chemical. (G) Polyester imide resin.

Use/Production. (G) Intermediate for electrical insulation coatings. Prod. range: Confidential.

P 87–328

Importer. CIBA-GEIGY Corporation.
Chemical. (G) Piperidinyl triazine derivative.
Use/Import. (S) Industrial light stabilizer for polymers, especially polypropylene fiber, ABS and other styrenics, and polyurethane. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Minimal; Skin Sensitization: Strong; Ames test: Negative: LC_{50}: 96 hr. (Zebra fish): >119 parts per million (ppm); EC_{50} 24 hr (Daphnia magna): 73 ppm; COD: 1.84 g; Biodegradability: Not biodegradable; Micronucleus assay test: Negative.

P 87–329

Importer. CIBA-GEIGY Corporation.
Chemical. (S) Butanedioic acid, (2-benzothiazolylthio)-.
Use/Import. (S) Industrial, commercial corrosion inhibitor for protective coatings on metal surfaces. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Skin Sensitization: Mild to moderate; Ames test: Negative; Nucleus anomaly test: Negative; Micronucleus assay test: Negative; NOEL: >1,000 mg/kg; LC_{50} 96 hr (Zerbra fish) >100 ppm; EC_{50} 24 hr. (Daphnia magna) 190 ppm; COD: 1:44 g; Biodegradability: Not biodegradable.

P 87–330

Manufacturer. Confidential
Chemical. (S) Aluminum, benzoate 2-ethyl hexanoate isopropyl alcohol complexes.
Use/Import. (G) Gelling agent in non-aqueous liquids. Import. range: Confidential.

P 87–331

Manufacturer. Jim Walter Research Corporation.
Chemical. (G) Mixed glycol aromatic polyester polyol.
Use/Production. (S) Industrial polyol for manufacture of cellular plastic insulation. Prod. range: 2,500,000 to 4,500,000 kg/yr.

P 87–332

Manufacturer. Confidential.
Chemical. (G) Substitute benzenesulfonamide.
Use/Production. (G) a component of a vehicle used in a printing ink. Prod. Range; Confidential.

P 87–333

Manufacturer. Confidential.
Chemical. (G) Carboxyphenylcarbonylindole.
Use/Production. (G) Captive intermediate use in manufacturing a minor component for paper coatings. Prod. range; Confidential.

P 87–334

Manufacturer. Confidential.
Chemical. (G) Substituted benzenesulfonyl chloride.
Use/Production. (G) Site-limited chemical intermediate consumed in the preparatin of a commercial product. Prod. range: Confidential.

P 87–335

Importer. Toyo Soda USA, Incorporated.
Chemical. (G) Polymethacrylate derivative with hydroxyalkylether.
Use/Import. (S) Industrial packings for liquid chromatography. Import range; 500 to 3,000 kg/yr.

P 87–336

Importer. Toyo Soda USA, Incorporated.
Chemical. (G) Polymethacrylate derivative with carboxyl group.
Use/Import. (S) Industrial packings for liquid chromatography. Import range: 300 to 1,500 kg/yr.

P 87–337

Importer. Toyo Soda USA, Incorporated.
Chemical. (G) Polymethacrylate derivative with phenyl group.
Use/Import. (S) Industrial packings for liquid chromatography. Import range: 300 to 1,500 kg/yr.

P 87–338

Importer. Toyo Soda USA, Incorporated.
Chemical. (G) Polymethacrylate derivative with butyl group.
Use/Import. (S) Industrial packings for liquid chromatography. Import range: 500 to 3,000 kg/yr.

P 87–339

Importer. Toyo Soda USA, Incorporated.
Chemical. (G) Polymethacrylate derivative with diethylaminoethyl group.
Use/Import. (S) Industrial packings for liquid chromatography. Import range: 300 to 1,500 kg/yr.

P 87–340

Manufacturer. Confidential.
Chemical. (G) Propoxylated quarternary ammonium compound.
Use/Production. (G) Textile treatment for industrial use. Prod. range: Confidential.

P 87–341

Manufacturer. Confidential.
Chemical. (G) Modified epoxy resin.
Use/Production. (S) Site/limited component of metal coating formulation. Prod. range; 50,000 to 100,000 kg/yr.

P 87–342

Manufacturer. Confidential.
Chemical. (G) Hydrophobic silica.
Use/Production. (S) Site-limited defoamer for pulp and paper. Prod. range; Confidential.

P 87–343

Manufacturer. Confidential.
Chemical. (S) Polymer of 7–oxobicyclo[4.1.0]heptane-3-carboxylic acid, 7-oxabicyclo[4.1.0]hept-3-ylmethyl ester; tall-oil fatty acid; Pamolyn 380 tall-oil fatty acids; 2-methyl-2-propenoic acid methyl ester; 2/propenoic acid; 1,1-dimethylethyl hydroperoxide; N,N-diethyl-ethanamine.
Use/Production. (S) Industrial polymer used as the major vehicle component of a protective coating (paint) formulated for use on metal substrates. Prod. range: Confidential.

P 87–344

Manufacturer. Confidential.
Chemical. (S) Polymer of 2-hydroxy ethyl acrylate; Jeffamine T-403, polyoxypropylene glycol; and isophorone diisocyante.
Use/Production. (S) Industrial radiation cure coating. Prod. range: Confidential.

P 87–345

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic with butyl acrylate.
Use/Production. (G) Printing ink component with an open use. Prod. range; 5,000 to 10,000 kg/yr.

P 87–346

Manufacturer. Confidential.
Chemical. (G) Polyurethane polymer.
Use/Production. (G) Non-dispersive formulation adhesive. Prod. range: Confidential.

P 87–347

Importer. Toyo Soda USA, Incorporated.
Chemical. (G) Polymethacrylate derivative with propylsulfonate group.
Use/Import. (S) Industrial packings for liquid chromatography. Import range: 300 to 1,500 kg/yr.

P 87–348

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.

Use/Production. (G) Coating resin. Prod. range: Confidential.

P 87-349

Importer. Marubeni America Corporation.

Chemical. (G) Partially cross linked saturated polyester with medium number-average molecular weight.

Use/Import. (S) Commercial toner for electrophotography. Import range: 30,000 to 100,000 kg/yr.

P 87-350

Importer. Marubeni America Corporation.

Chemical. (G) Urethane acrylate.

Use/Import. (S) Commercial UV curable ink; UV curable coating; and UV curable adhesive. Import range: 10,000 to 30,000 kg/yr.

P 87-351

Importer. Marubeni America Corporation.

Chemical. (G) High molecular weight linear saturated polyester.

Use/Import. (S) Flexibility modifier for hard resins. Import range: 20,000 to 30,000 kg/yr.

P 87-352

Importer. Marubeni America Corporation.

Chemical. (G) Partially crosslinked saturated polyester with medium number-average molecular weight.

Use/Import. (S) Commercial toner for electrophotography. Import range: 30,000 to 100,000 kg/yr.

P 87-353

Importer. Marubeni America Corporation.

Chemical. (G) Urethane acrylate.

Use/Import. (S) Industrial UV curable ink; UV curable coating; and UV curable adhesive. Import range: 10,000 to 30,000 kg/yr.

P 87-354

Importer. Marubeni America Corporation.

Chemical. (G) Urethane acrylate.

Use/Import. (S) Industrial UV curable ink; UV curable coating; and UV curable adhesive. Import range: 10,000 to 30,000 kg/yr.

P 87-355

Importer. Marubeni America Corporation.

Chemical. (G) Urethane acrylate.

Use/Import. (S) Industrial UV curable ink, UV curable coating; and UV curable adhesive. Import range: 10,000 to 30,000 kg/yr.

P 87-356

Importer. Marubeni America Corporation.

Chemical. (G) Urethane acrylate.

Use/Import. (S) Industrial UV curable ink, UV curable coating; and UV curable adhesive. Import range: 10,000 to 30,000 kg/yr.

P 87-357

Importer. Marubeni America Corporation.

Chemical. (G) Urethane acrylate.

Use/Import. (S) Industrial UV curable ink, UV curable coating; and UV curable adhesive. Import range: 10,000 to 30,000 kg/yr.

P 87-358

Importer. Werner G. Smith Incorporated.

Chemical. (S) Ester of linseed oil, and linseed fatty acids; reacted with maleic anhydride, ethylene glycol and pentaerythrital.

Use/Production. (S) Industrial foundry sand binder. Prod. range: 10,000 kg/yr.

P 87-359

Importer. American Hoechst Corporation.

Chemical. (G) Polyvinylsulfonate.

Use/Production. (S) Industrial additive in water based drilling fluids and completion fluids. Prod. range: 5,000 to 10,000 kg/yr.

Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

P 87-360

Manufacturer. American Hoechst Corporation.

Chemical. (G) Polyperflouroalkylacrylate.

Use/Production. (G) Upholstery—oil and water repellent. Prod. range: Confidential.

Toxicity Data. Acute oral: 5 g/kg; Irritation: Skin—Minimal Eye—Mild.

P 87-361

Manufacturer. American Hoechst Corporation.

Chemical. (G) Substituted azo naphthalene sulfonic acid.

Use/Production. (G) Fiber reactive dye. Prod. range: Confidential.

Toxicity Data. Acute oral: 5 g/kg; Irritation: Skin—Minimal, Eye—Mild.

P 87-362

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. (S) Trichloromethylsilane.

Use/Import. (G) Industrial varnish for electric insulation and vehicle for heat resistant or weather resistant paint. Import range: 1,500 to 3,500 kg/yr.

P 87/363

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. (S) Trichloromethylsilane, dichlorodimethylsilane; trichlorophenylsilane, dichlorodiphenylsilane.

Use/Import. (G) Industrial varnish for electric insulation; vehicle for heat resistant or weather resistant paint and resin for modification. Import range: 2,000 to 4,000 kg/yr.

P 84-364

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. (S) Dichlorodimethylsilane, trichlorophenylsilane.

Use/Import. (S) Industrial varnish for electric insulation and vehicle for heat resistant. Import range: 1,200 to 3,000 kg/yr.

P 87-365

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. Trichloromethylsilane, dichlorodimethylsilane.

Use/Import. (S) Industrial varnish for electric insulation and vehicle for heat resistant. Import range: 1,200 to 4,000 kg/yr.

P 87-366

Importer. Shin-Etsu Silicones of America, Incorporated.

Chemical. Trichloromethylsilane, dichlorodimethylsilane, trichlorophenylsilane.

Use/Import. (S) Industrial varnish for electric insulation and vehicle for heat resistant or weather resistant paint. Import range: 1,200 to 4,000 kg/yr.

P 87-367

Manufacturer. Confidential.

Chemical. (G) Bicycloheptene diester poly(ethylene oxide).

Use/Produciton. (G) A component of formulations for open nondispersive use. Prod. range: Confidential.

P 87-368

Importer. Orient Chemical Corporation.

Chemical. (G) Diaminostilbene disulfonic acid derivative.

Use/Import. (S) Commercial dyestuff for printer ink. Import range: 1,000 to 3,000 kg/yr.

P 87-369

Manufacturer. Confidential.

Chemical. (S) Tris carbamodithioic acid compound with N-coco alkyl propylene diamine sodium salt tris carbamodithioic acid compound with ethyl aminopiperazine sodium salt

hexakis carbamodithioic acid compound with triethylene tetramine sodium salt.

Use/Production. (S) Industrial and commercial nonpotable water coagulant and flocculant. Import range: 49,000 to 73,500 kg/yr.

Dated: December 22, 1986.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 86-29361 Filed 12-30-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection

Consolidated Reports of Condition and Income (Insured State Nonmember Commercial Banks) (OMB No. 3064-0052).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35),the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments

Comments on this collection of information should be submitted on or before January 15, 1987.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY: The FDIC is submitting for OMB review changes to the Consolidated Reports of Condition and Income (Call Reports) filed quarterly by insured state nonmember commercial banks. Although the changes cover several areas of the Call Reports, the request is being made at this time because of the recent passage of the Tax Reform Act of 1986. Provisions of that statute will affect the tax treatment of certain bank assets and the types of such assets banks tend to acquire. In addition, the deregulation of deposit interest rates was completed as of April 1, 1986. Reporting changes in response to that event and the other revisions have been incorporated into this submission. As a result of the proposed changes it is estimated that 818,677 hours will be spent annually by insured state nonmember commercial banks, collectively, in preparing Call Reports.

Dated: December 23, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-29315 Filed 12-30-86; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004067-003.

Title: Oakland Terminal Agreement.

Parties:

City of Oakland

Stevedoring Services of America.

Synopsis: The proposed amendment would extend the basic agreement on a month-to-month basis until no later than March 31, 1987.

Agreement No.: 217-011047.

Title: ELMA/A. Bottacchi Space Charter Agreement.

Parties:

Empresa Lineas Maritimas Argentians S.A.

A. Bottacchi S.A. de Navegacion C.R.I.I.

Synopsis: The proposed agreement would create a non-exclusive space charter arrangement between the parties in the trade between U.S. Atlantic and Gulf ports and ports in Brazil, Uruguay and Argentina. The parties have requested a shortened reveiew period.

Agreement No.: 202-010790-003.

Title: Israel Eastbound Conference.

Parties:

Zim Israel Navigation Co., Ltd.

Farrell Lines, Inc.

Lykes Bros. Steamship Company, Inc.

Synopsis: The proposed amendment would modify the independent action provisions of the agreement to comply with the Commission's regulations. The modification would remain in effect through March 31, 1987.

By Order of the Federal Maritime Commission.

Dated: December 24, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-29322 Filed 12-30-86; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86M-0486]

Coherent, Inc.; Premarket Approval of Systems 9900, 8900, 7900, and 7910 Nd:YAG Lasers for Iridotomy

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Coherent, Inc., for premarket approval, under the Medical Device Amendments of 1976, of the Systems 9900, 8900, 7900, and 7910 Nd:YAG Lasers for performing an iridotomy (hole in the iris). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by January 30, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–8221.

SUPPLEMENTARY INFORMATION: On May 28, 1986, Coherent, Inc., Palo Alto, CA 94303, submitted to CDRH a supplemental application for premarket approval of the Systems 9900, 8900, 7900, and 7910 Nd:YAG Lasers. The Systems 9900, 8900, 7900, and 7910 Nd:YAG Lasers are neodymium:yttrium-aluminum-garnet (Nd:YAG) ophthalmic lasers that are indicated for performing an iridotomy (hole in the iris).

On July 17, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On November 7, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ–460), address above.

Opportunity for Administration Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before January 30, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: December 18, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–29216 Filed 12–30–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 86F–0412]

FilmTec Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that FilmTec Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the cross-linked polyamide reaction product of 1,3,5-benzenetricarbonyl trichloride and piperazine as a reverse osmosis membrane intended for use in contact with food.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3904) has been filed by FilmTec Corp., 7200 Ohms Lane, Minneapolis, MN 55435, proposing that § 177.2550 *Reverse osmosis membranes* (21 CFR 177.2550) be amended to provide for the safe use of the cross-linked polyamide prepared by the polymerization of 1,3,5-benzenetricarbonyl trichloride with piperazine as a reverse osmosis membrane intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 18, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–29215 Filed 12–30–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–090–06–6310–12; GP7–051; 6–00151]

Emergency Closure of Public Lands and Access Roads; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands and access roads in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands and access roads in Lane County, Oregon are temporarily closed to all public use, including vehicle operation, camping, shooting, hiking, and sightseeing from December 16, 1986 through March 31, 1987. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as Clear Cut Area No. 1 of the Timber Sale Contract No. OR090–TS9–44 and are located as follows:

Willamette Meridian, Oregon

T. 15 S., R. 1 W.,
Sec. 34, Metes and Bounds within the S½NW¼, N½SW¼.

Containing approximately 43 acres.

All roads on the public lands listed above are closed as specified above, as are BLM road No. 16–1–5.3 from its beginning in Section 5, T. 16 S., R. 1 W., W.M. to its junction with BLM road No. 16–1–3 in Section 3, T. 16 S., R. 1 W., W.M. and BLM road No. 16–1–3 from its beginning to its junction with BLM road No. 15–1–34.2 in Section 34, T. 15 S., R. 1 W., W.M. Road No. 16–1–3 is entirely located on public land, while road No. 16–1–

5.3 is located partially on public land and partially on private land.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; State, local and Federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the purchasers of BLM timber within the closure area and their subcontractors. In addition, the owners of the non-Federal lands crossed by BLM road No. 16–1–5.3 and those residing full time on such lands are exempt from the closure to the extent necessary to access and manage their lands. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands and roads temporarily closed to public use under this order will be posted with signs at points of public access. In addition, the boundaries of the closed Clear Cut Area are blazed, painted and posted.

The purpose of this emergency temporary closure is to protect valuable public timber resources from unauthorized damage, to facilitate authorized timber harvest operations, and to protect persons from potential harm from logging operations.

EFFECTIVE DATES: December 16, 1986 through March 31, 1987.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands and roads are available from the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Lee Lauritzen, Mohawk Area Manager, Eugene District Office, at (503) 687–6671.

Dated: December 16, 1986.

Jane Kollmeyer,

Area Manager (Acting).

[FR Doc. 86–29288 Filed 12–30–86; 8:45 am]

BILLING CODE 4310–33–M

[WY–920–07–4111–15–7001; W–69857]

Proposed Reinstatement of Terminated Oil and Gas Lease; Sublette County, WY

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–69857 for lands in Sublette County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $7 per acre, or fraction thereof, per year and 16–⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–69857 effective January 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 86–29290 Filed 12–30–86; 8:45 am]

BILLING CODE 4310–22–M

California Desert District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the California Desert District Grazing Advisory Board.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579, Title IV, section 403, that a public meeting of the California Desert District Grazing Advisory Board will be held on Thursday, January 29, 1987 from 10:00 a.m. to 4:30 p.m. in the Conference Room, Barstow Resource Area Office, 150 Coolwater Lane, Barstow, California 92311.

The agenda for the meeting will include:

—Range Improvement Project Review for FY86
—Range Improvement Projects Funded for FY87
—FY 87 Range Management Budget
—Election of Chairman of the Board
—Rangeland Monitoring
—Wild Horse and Burro Management.

The meeting is open to the public, with time allocated for public comment after each subject has been presented.

Summary minutes of the meeting will be maintained in the California Desert District and will be available for public inspection during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION AND MEETING CONFIRMATION CONTACT: Bureau of Land Management, California Desert District Office, 1695 Spruce Street, Riverside, California 92507 (714) 351–6671.

Dated: December 23, 1986.

Wesley T. Chambers,

Acting District Manager.

[FR Doc. 86–29329 Filed 12–30–86; 8:45am]

BILLING CODE 4310–40–M

[ID–050–07–4322–14]

Shoshone District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Advisory Board Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

DATE: Wednesday, January 28, 1987 at 9:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Idso, DM, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352. Telephone (208) 886–2206 or FTS 554–6576.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items: (1) Review of range monitoring program, (2) Review of Board financial status, (3) Initial distribution of Board funds, and (4) Project maintenance/Bureau maintained project assessment costs.

Operation and administration of the Board will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1984.

The meeting will be open to the public. Anyone may present an oral statement between 10:00 and 11:00 a.m. or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District Manager by January 27, 1987. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Jon H. Idso,

District Manager.

[FR Doc. 86–29284 Filed 12–30–86; 8:30 a.m.]

BILLING CODE 4310–GG–M

[NV-020-07-4212-14; N-42562]

Realty Action Change; Public Land Sale Readvertisement; Humboldt County, NV

ACTION: Notice of Realty Action Change—Readvertisement of public land sale, N–42562 located in Humboldt County, Nevada

SUMMARY: This notice modifies in part, **Federal Register** Document 86–16483 (51 FR 26471) published on July 23, 1986.

EFFECTIVE DATE: January 30, 1987.

FOR FURTHER INFORMATION CONTACT: Hal Green, District Realty Specialist, Winnemucca District Office, Bureau of Land Management, 705 E. 4th Street, Winnemucca, NV 89445, (702) 623–3676.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management attempted to sell a parcel of public land by non-competitive land sale procedures. This parcel did not sell. Therefore, the Notice of Realty Action is being changed to re-offer the same public land under modified-competitive land sale procedures. Sale brochures containing information concerning the subject parcel, bidding procedures, etc., can be obtained by writing to the above address.

The information contained in the **Federal Register** document referenced above is hereby modified and changed to reflect the following:

1. All reference to *non-competitive sale* is to be changed to read *modified-competitive.*

2. The patent when issued will be subject to right-of-way, N–20694, 60 ft. access road easement.

3. Paragraph number 4 is to be deleted.

All other terms and conditions of the original Notice of Realty Action continue to apply.

Dated: December 11, 1986.

Frank C. Shields,

District Manager, Winnemucca.

[FR Doc. 86–29328 Filed 12–30–86; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Outer Continental Shelf Advisory Board; North, Mid, and South Atlantic Regional Technical Working Groups

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463).

Name: Plenary Session of North, Mid, and South Atlantic Regional Technical Working Groups.

Date: January 30, 1987.

Place: Stouffer Concourse Hotel, Farragut Ballroom, 2399 Jefferson Davis Highway, Arlington, Virginia 22202.

Time: 8 a.m. to 5 p.m.

The plenary Regional Technical Working Group (RTWG) membership consists of representatives from Federal Agencies, the Coastal States of Maine through Florida, the petroleum industry, and other private interests. The Atlantic RTWG's are three of six such Committees that advise the Director of the Minerals Management Service on technical matters of Regional concern regarding offshore prelease and postlease sale activities.

Agenda items will include the following subjects: State Co-chair Elections; Nonenergy Minerals; the Role of the RTWG in the Atlantic Region; Oil and Gas and NonEnergy Minerals Activities Reports; Sale 96 (North Atlantic) Environmental Issues; Environmental Studies Advice, and Public Comment.

This meeting is open to the public. Individuals wishing to make oral presentations to the Committee concerning agenda items should contact Marsha Polk of the Atlantic OCS Regional Office at (703) 285–2165 by January 15, 1987. Written statements should be submitted by the same date to the Atlantic OCS Region, Minerals Management Service, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180. Minutes of the meeting will be available for public inspection and copying by April 30, 1987, at the above address.

Dated: December 23, 1986.

Bruce G. Weetman,

Regional Director, Atlantic OCS Region.

[FR Doc. 86–29235 Filed 12–30–86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Phillips Petroleum Co.

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Phillips Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6842, Block 40, Chandeleur Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on December 19, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans. Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert, Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: 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 DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected

local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 22, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-29292 Filed 12-30-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Determination of Concessioner Franchise Fees

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: This final policy changes the method used to determine franchise fees paid by concessioners for the privilege of operating commercial activities in areas administered by the National Park Service. The method links the determination of the fee to published industry statistics. The revised franchise fee system procedures are being incorporated into the Concessions Guideline, NPS-48.

EFFECTIVE DATE: December 31, 1986.

FOR FURTHER INFORMATION CONTACT: David E. Gackenback, Chief, Concessions Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Copies of the revised approved franchise fee procedures are available upon request.

SUPPLEMENTARY INFORMATION: On August 7, 1985, the National Park Service published in the **Federal Register** (Vol. 50, No. 152, pages 31926 and 31927) a notice of intention to revise the method used to determine franchise fees paid by concessioners. As a result of the notice, the National Park Service received 19 comments on the proposed revision to the franchise fee procedures. Seventeen comments were received from concessioners, one was received from the Chairman of the Conference of National Park Concessioners and one was received from the Conservation Foundation. The comments were evaluated by a franchise fee study group and several changes were made to the proposed franchise fee procedures.

William Penn Mott, Jr.,

Director, National Park Service.

[FR Doc. 86-29309 Filed 12-0-86; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-246]

Certain Xenon Lamp Dissolver Slide Projectors and Components Thereof; Commission Decision Not To Review an Initial Determination Granting Two Motions To Terminate Respondents, Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of the presiding administrative law judge's initial determination granting a joint motion to terminate one respondent and granting complainant's motion to terminate the remaining respondent.

SUMMARY: On November 10, 1986, complainant Bergen Expo Systems, Inc. (Bergen) and respondent D.O. Industries, Inc. (D.O. Industries) jointly moved to terminate the investigation as to D.O. Industries based on a settlement and license agreement (Motion No. 246-18). Simultaneously, Bergen moved to terminate Hokushin Precision Co., Ltd. (Hokushin), the only other respondent, from the investigation (Motion No. 246-19)

On November 25, the ALJ issued an ID granting the two motions (Order No. 17). The ALJ found that terminating D.O. Industries and Hokushin from the investigation is in the public interest. The Commission has determined not to review the ID. The termination of both D.O. Industries and Hokushin from the investigation terminates the investigation.

FOR FURTHER INFORMATION CONTACT: Kristian E. Anderson, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, DC 20436, telephone 202-523-0074.

SUPPLEMENTARY INFORMATION:

Authority: This action is taken under the authority of section 337 of the Tariff Act of 1930 (10 U.S.C. 1337) and Commission rules 210.53 and 210.55 (19 CFR 210.53, 210.55).

Background

On April 3, 1986, complainant Bergen filed a a complaint with the Commission alleging that respondents D.O. Industries and Hokushin were violating section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Specifically, Bergen alleged that respondents were infringing claims 1, 2, 6-9, and 13 of U.S. Letters Patent 4,158,491 (the '491 patent) and failing to mark the country of origin on the imported projectors.

The Commission instituted the present investigation of May 7, 1986. 51 FR 16909. Subsequently, the Commission determined not to review an ID by the ALJ to eliminate the allegation of infringement of claims 2 and 9 of the '491 patent. 51 FR 41166.

Public Inspection

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By Order of the Commission.

Issued: December 23, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-29311 Filed 12-30-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-250]

Certain Ventilated Motorcycle Helmets; Commission Decision Not To Review Initial Determination Granting Motion To Amend the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of an initial determination (ID) granting a motion to amend the complaint.

SUMMARY: The Commission has determined not to review an ID (Order No. 14) granting a motion by complainant to amend the complaint in the above-referenced investigation to include the Vetter Advantage, a ventilated motorcycle helmet produced by complainant under U.S. Letters Patent 4,054,953, after institution of the investigation.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0079.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53 of the Commission's Rules of Practice and Procedure (19 CFR 210.53).

On November 24, 1986, the presiding administrative law judge (ALJ) issued Order No. 14 granting complainant's motion to amend the complaint to include the Vetter Advantage, a

ventilated motorcycle helmet alleged to be manufactured by complainant according to U.S. Letters Patent 4,054,953, one of the patents in issue in this investigation, after the institution of the investigation. Two petitions for review were filed by respondents. The Commission investigative attorney filed a response to the petitions for review supporting the ID. No comments from other government agencies were received.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information concerning this investigation can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: December 23, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–29312 Filed 12–30–86; 8:45 am]

BILLING CODE 7020-02-M

[332–242]

Preshipment Inspection Programs and Their Effect on U.S. Commerce

AGENCY: Unites States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: December 16, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Constance Hamilton, Office of Economics, U.S. International Trade Commission, Washington, DC, 20436, telephone 202–523–1179.

Background and Scope of Investigation

The Commission instituted the investigation, No. 332–242, on December 16, 1986, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) following receipt on October 24, 1986 of a request therefor from the U.S. Trade Representative. USTR requested the investigation at the direction of the President pursuant to section 332 of the Tariff Act and section 303(a) of the Trade and Tariff Act of 1984 (19 U.S.C. 2241(c) note).

USTR stated that it had received a petition with respect to such practices under section 301 of the Trade Act of 1974 (19 U.S.C. 2411) but that institution of a section 301 investigation was premature at this time. USTR stated that exporters had indicated that these inspections have delayed shipments and involved unreasonable requests for business proprietary information or unnecessarily extensive and detailed pricing information. USTR stated that several countries have contracted for the service and that the practice is spreading rapidly.

USTR stated that a public hearing in Florida appeared warranted. USTR asked that the Commission report the results of its investigation as expeditiously as possible.

Public Hearing

The Commission will hold a public hearing in connection with the investigation in Miami, Florida at a time and place to be announced. All interested persons shall have the right to appear by counsel or in person, to present information and to be heard. Procedures concerning requests to appear will be described in the notice announcing the time and place of the hearing.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on March 20, 1987. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 701 E Street, NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

December 22, 1986.

[FR Doc. 86–29314 Filed 12–30–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701–TA–269 (Final) and 731–TA–311, 312, and 315 (Final)]

Certain Brass Sheet and Strip From Brazil, Canada, and the Republic of Korea

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is materially injured by reason of imports from Brazil (investigation No. 701–TA–269 (Final)) of certain brass sheet and strip,[3] provided for in item 612.39 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be subsidized by the Government of Brazil.

Further, the Commission determines,[4] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from Brazil (investigation No. 731–TA–311 (Final)), Canada (investigation No. 731–TA–312 (Final)), and the Republic of Korea (investigation No. 731–TA–315 (Final)) of certain brass sheet and strip,[5]

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler and Vice Chairman Brunsdale determine that an industry in the United States is not materially injured or threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil which are being subsidized.

[3] For purposes of these investigations, the term "certain brass sheet and strip" refers to brass sheet and strip, other than leaded brass and tin brass sheet and strip, of solid rectangular cross section, over 0.006 inch but not over 0.188 inch in thickness, in coils or cut to length, whether or not corrugated or crimped, but not cut, pressed, or stamped to nonrectangular shape, provided for in items 612.3960, 612.3982, and 612.3986 of the *Tariff Schedules of the United States Annotated* (TSUSA). The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by these investigations.

[4] Chairman Liebeler and Vice Chairman Brunsdale determine that an industry in the United States is not materially injured or threatened with material injury, and that the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil, Canada, or the Republic of Korea which are being sold at less than fair value.

[5] For purposes of these investigations, the term "certain brass sheet and strip" refers to brass sheet and strip, other than leaded brass and tin brass sheet and strip, of solid rectangular cross section, over 0.006 inch but not over 0.188 inch in thickness, in coils or cut to length, whether or not corrugated or crimped, but not cut, pressed, or stamped to

Continued

provided for in item 612.39 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted investigations Nos. 731–TA–311, 312, and 315 (Final) effective August 22, 1986, following preliminary determinations by the Department of Commerce that imports of certain brass sheet and strip from Brazil, Canada, and the Republic of Korea were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 10, 1986 (51 FR 32255). The Commission instituted investigation No. 701–TA–269 (Final) effective November 10, 1986, following a preliminary determination by the Department of Commerce that imports of certain brass sheet and strip from Brazil were being subsidized within the meaning of section 701 of the Act (19 U.S.C. 1671). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 21, 1986 (51 FR 42142). The hearing on the investigations was held in Washington, DC, on December 1, 1986, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 22, 1986. The views of the Commission are contained in USITC Publication 1930 (December 1986), entitled "Certain Brass Sheet and Strip from Brazil, Canada, and the Republic of Korea: Determinations of the Commission in Investigation No. 701–TA–269 (Final) and Investigations Nos. 731–TA–311, 312, and 315 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: December 23, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–29313 Filed 12–30–86; 8:45 am]

BILLING CODE 7020–02–M

nonrectangular shape, provided for in items 612.3960, 612.3982, and 612.3986 of the *Tariff Schedules of the United States Annotated* (TSUSA). The chemical compositions of the products under investigation are currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical compositions are defined by other C.D.A. or U.N.S. series are not covered by these investigations.

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 399]

Cost Recovery Percentage; Rail Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Adoption of a 1985 cost recovery percentage and a 1986 cost recovery percentage and decision.

SUMMARY: The Commission has adopted a Cost Recovery Percentage (CRP) of 342.5 percent for the years 1985 and 1986. In doing so the Commission has has decided to fall back to the most recent valid CRP which was calculated for the year 1983 by applying 1981 Rail Form A unit costs to the movements from the 1981 ICC Waybill Sample. Calculations made for 1985 and 1986 using 1983 and 1984 data are invalid due to overstatement of revenues on waybills for traffic moving under contract rates. The threshold for rate regulation of market dominant traffic will remain at 180 percent. In light of falling back to a prior CRP calculation and the continuing problems caused by overstated contract rate revenues and other problems the Commission has decided not to issue final rules at this time. The Commission will conduct additional research to develop an alternate method of calculating the CRP from waybill data and will report its progress in later decisions.

DATE: Effective on December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 275–0938

or

William T. Bono, (202) 275–7354.

SUPPLEMENTARY INFORMATION: Additional information is contained in the decision. To purchase a copy of the full decision, write T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, D.C. 20423, or telephone 289–4357 (Washington, DC Metropolitan Area) or toll free (800) 424–5403.

This action will not significantly affect either the quality of the human environment or energy conservation. It will not have significant economic impact on a substantial number of small entities.

Authority: 49 U.S.C. 10321, 10709, and 5 U.S.C. 553.

Decided: December 19, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Sterrett, and Lamboley. Vice Chairman Simmons dissented with a separate expression. Commissioner Lamboley concurred in the result.

Noreta R. McGee,

Secretary.

[FR Doc. 86–29381 Filed 12–30–86; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–19, Sub-No. 128X]

The Baltimore and Ohio Railroad Co.; Exemption Abandonment and Discontinuance of Trackage Rights Between Carton and Musselman in Fayette and Ross Counties, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*: (1) The discontinuance by the Baltimore and Ohio Railroad Company (B&O) of 13.97 miles of trackage rights over the line of Grand Trunk Western Railroad Company (GTW) between milepost 50.44, at or near Carton, OH, and milepost 65.41, at or near Frankfort, OH; and (2) the abandonment by B&O of 4.72 miles of rail line between milepost 64.41, at or near Frankfort, and milepost 6913, at or near Musselman, OH; subject to standard labor protection conditions, in both instances, and to the condition that abandonment of the 4.72-mile line not be consummated until GTW obtains authority or an exemption to discontinue its trackage rights, although B&O may discontinue its operations over the line. The Lines are in Fayette and Ross Counties, OH.

DATES: These exemptions will be effective on January 30, 1987. Petitions to stay must be filed by January 15, 1987, and petitions for reconsideration must be filed by January 26, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB–19 (Sub-No. 128X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Lawrence H. Richmond, The Baltimore and Ohio Railroad Company 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar; (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: December 19, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 86–29330 Filed 12–30–86; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 393; Sub-No. 1]

Standards for Railroad Revenue Adequacy; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision.

SUMMARY: By this decision served December 31, 1986, the standards adopted in Ex Parte No. 393, *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981), for determining railroad revenue adequacy are revised in the following manner: (1) Subtract accumulated deferred tax reserves from the net investment base when calculating return on investment; (2) calculate return on investment using ratable depreciation accounting data, rather than retirement-replacement-betterment data; (3) calculate return on investment on a system basis by combining all class I railroads under common control if they form a unified, jointly-managed system; and (4) include in the return on investment calculation the results of majority-owned Class I subsidiaries that are integral to rail operations, taxes related only to rail operations and interest income associated with working capital investment. The guidelines and procedures necessary to accommodate the revisions described in (4) will be set forth in a separate rulemaking proceeding.

DATE: This decision shall be effective on December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

This action will not significantly affect either the quality of the human environment or energy conservation. Nor will it have a significant economic impact of a substantial number of small entities.

Authority: 49 U.S.C. 10704(a).

Decided: December 16, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons concurred with a separate expression. Commissioner Andre dissented in part with a separate expression. Commissioner Lamboley, dissented in part, adheres to his vote at the open conference on October 7, 1986. Commissioner Lamboley will submit a separate expression at a later date.

Noreta R. McGee,

Secretary.

[FR Doc. 86–29331 Filed 12–30–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance

State Reimbursement Program for Incarcerated Mariel-Cubans

AGENCY: Bureau of Justice Assistance, Justice.

ACTION: Notice of issuance of solicitation for applications to reimburse states for the expenses incurred by the incarceration of Mariel-Cubans.

SUMMARY: The Bureau of Justice Assistance (BJA) is administering a program to reimburse states for expenses incurred by the incarceration of certain Mariel-Cubans in state facilities.

ADDRESS: Bureau of Justice Assistance, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Louise S. Lucas, (202) 272–4605. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Bureau of Justice Assistance (BJA) is publishing a notice of issuance of solicitation to implement a State Reimbursement Program for Incarcerated Mariel-Cubans. The Department of Justice Appropriation Act for 1987 (Pub L. 99–500) allocates up to $5 million for the purpose of making grants to states for their expenses for the incarceration of Mariel-Cubans in state facilities.

I. General Provisions

Statutory Authority

The statutory authority is the Department of Justice Appropriation Act for 1987 (Pub. L. 99–500).

Submission Date

The submission date for state applications is no later than February 1, 1987.

Eligible Applicants

All states are eligible to apply for and receive grants. *State*, means any state of the United States and includes the District of Columbia and the Commonwealth of Puerto Rico.

Participating States

It is expected that the 24 states that participated last year will participate again this year, specifically, Arkansas, California, Connecticut, Florida, Georgia, Iowa, Idaho, Illinois, Kansas, Louisiana, Minnesota, Nebraska, Nevada, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, Washington, and Wisconsin. There may be the possibility of a few additional states participating also.

II. Allocations and Uses of Funds

Fund Availability

The Act provides a total of $5 million for the purpose of making grants to states. The total amount of funds awarded will be on the basis that the certified number of incarcerated persons in a state bears to the total certified number of such incarcerated persons. The amount of reimbursement per prisoner, per annum, will not exceed $12,000.

Fund Use

The intent of the public law is to reimburse the states for their expenses by reason of Mariel-Cubans having to be incarcerated in state facilities. A budget or expenditure plan is not required as the award will be solely for reinbursement. No match funds are required.

III. Application Content

(a) All state applicants must submit Standard Form 424 (Application for Federal Assistance), and a *certified listing* of incarcerated Mariel-Cuban prisoners. We request that inmates previously verified be separated from newly submitted inmates. For those

previously verified, there is no need to resubmit Items 13 and 14 below. The certified listing will include information in the following sequence:

(1) Name (last name first).
(2) AKA (also known as).
(3) Alien Identification Number (e.g., A24456789).
(4) Inmate Number.
(5) Date of birth.
(6) Incarceration date.
(7) Probable earliest release date.
(8) Conviction Offense (Criminal Offense Code No. not acceptable).
(9) Conviction date.
(10) Last known address.
(11) State facility housing the prisoner.
(12) State facility address.
(13) I-247 Form—Immigration Detainer Notice (If INS has filed a Detainer on this prisoner, submit a copy).
(14) Fingerprint card.

Submission of Mariel-Cuban data in an alternative format must be approved by the BJA prior to submission of an application. Please contact Louise S. Lucas, BJA, 202/272-4605.

Note.—We have limited electronic data transfer capabilities. If interested, please contact Tom Lintner at 202/272-6838.

(b) The certified listing *MUST* be signed by the Governor or his authorized representatives.

(c) The period of incarceration for reimbursement purposes is October 1, 1986 to September 30, 1987. The computation of funds will be based on an aggregate total of certified prisoners incarcerated for a twelve month period (e.g., if two prisoners are incarcerated for six months during the period, the state will be reimbursed the full amount for one year).

(d) The Act is specific in that the prisoner must have been paroled into the United States by the Attorney General during the 1980 influx of Mariel-Cubans. This means those Cubans who *Entered Without Inspection* (EWI), earlier arrivals (pre-boatlift), and/or later arrivals (post-boatlift), cannot be included and, thus, no expenses will be reimbursed.

(e) State law will prevail when a determination is required as to what constitutes a state facility and/or a state prisoner

IV. Review of State Applications

State applications must be submitted in the form and at the time prescribed.

(a) The application and certified listing will be reviewed by BJA and a cross-check verification of prisoners will be made by the Immigration and Naturalization Service of the U.S. Department of Justice. This review will be accomplished no later than April 1, 1987 and grants will be immediately made to states

(b) Compliance with Executive Order 12372, "Intergovernmental Review of Federal Programs." This program is covered by Executive Order 12372 and Department of Justice implementing regulations 28 CFR Part 30. States must submit grant applications to the state's *Single Point of Contact*, if there is a *Single Point of Contact*, and if this program has been selected for coverage by the state process, at the same time applications are submitted to the Federal agency. State processes have 60 days starting from the application deadline to comment on applications. Applicants should contact their state "Single Point of Contact" as soon as possible to alert them to the prospective application and receive instructions regarding the process.

(c) The BJA will notify the applicant in writing of the specific reasons for the disapproval of the application amendment, in whole or in part.

V. Civil Rights Assurances

The applicant State must specifically assure that it will comply, and that subgrantees and contractors will comply, with all applicable Federal non-discrimination laws and regulations, including the following:

(a) Title VI of the Civil Rights Act of 1964,

(b) Section 809(C) of Justice Assistance Act of 1984,

(c) Section 504 of the Rehabilitation Act of 1973, as amended,

(d) Title IX of the Education Amendments of 1972,

(e) The Age Discrimination Act of 1975, and,

(f) The Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts, C, D, E, and G.

Any applications for $500,000 or more shall be accompanied by a copy of the current Equal Employment Opportunity Program of the corrections department in accordance with the provisions of 28 CFR 42.301 *et seq.* State applicants that previously applied for and received funding under this initiative, and had an Office of Justice Programs' approval of their Equal Employment Opportunity Program, need only submit a statistical update of the previously approved program.

Benjamin H. Renshaw,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 86-29305 Filed 12-30-86; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Room 3208, Washington, DC 20503 (telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics

Occupational Wage Survey Program
1200-0007 BLS 2751A, BLS 2752A, BLS 2752B, BLS 2753F, BLS 2753G, 552
Annually; other
State or local governments; business or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations
27,900 responses; 72,683 hours; 6 forms

Occupational wage survey data serve a variety of uses, including wage administration, negotiations, mediation, plant location decisions, and general economic analysis. The data are also used in the administration of the Federal Pay Comparability Act of 1970 and related Congressionally-mandated research; the Service Contract Act of 1965; and the Social Security Act. Amendment is required because Congress has appropriated additional funding for research and testing leading to a future broad-based survey of white-collar workers rather than funding a full-scale salary survey in State and local governments in 1987.

Revision

Pension Welfare Benefits Administration

Prohibited Transaction Class Exemption 79-1 and Recapture Exemption
1210-0059
On occasion; quarterly; annually
Businesses or other for profit; small businesses or organizations
199,063 responses; 63,038 hours

This class exemption exempts from the prohibited transaction restrictions of ERISA the effecting or executing of securities transactions on behalf of an employee benefit plan by a person who is a fiduciary with respect to the plan and who is acting in such transactions as agent for the plan.

Extension

Employment Standards Administration

Service Contract Act—Recordkeeping and Reporting Requirements—29 CFR Part 4
1215-0150; SCA-4
On occasion
Businesses or other for profit; small businesses or organizations
13,900 responses; 10,658 hrs.; 0 forms

Recordkeeping and incidental reporting requirements in Service Contract Act regulations applicable to employers performing on service contracts with the Federal government.

Extension

Employment and Training Administration

Quarterly Narrative Reports for Test Development Program
1205-0220; ETA RC 66
Quarterly
State or local governments
20 respondents; 128 hours; no forms

The Employment Service Reimbursable Grant, pursuant to section 7(c) of the Wagner-Peyer Act, as amended, is one overall grant to the states to fund special responsibilities of the Secretary of Labor not specifically authorized under sections 7 (a) & (b) of the Act, such as Test Development.

Signed at Washington, DC, this 23rd day of December, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86-29337 Filed 12-30-86; 8:45am]

BILLING CODE 4510-24-M

Mine Safety and Health Administration

[Docket No. M-86-211-C]

Barnes & Tucker Co.; Petition for Modification of Application of Mandatory Safety Standard

Barnes & Tucker Company, P.O. Box 176, Marion Center, Pennsylvania 15759-0176 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Tanoma Mine (I.D. No. 36-06967) located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a coupling spring-loaded lock that is mounted directly on the receptacle in lieu of a padlock.

3. Petitioner states that the coupling spring-loaded lock will be easier to maintain because it would eliminate undue hazards, due to lost or misplaced padlock keys. All employees will be instructed on the use of this device.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health

[FR Doc. 86-29341 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-187-C]

Barnhart Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Barnhart Coal Company, R.D. #1, Box 104, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its R & B Slope (I.D. No. 36-05593) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and caused a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as

determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-29342 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-204-C]

Blue Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Blue Diamond Coal Company, P.O. Box 278, Stearns, Kentucky 42647 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Justus Mine (I.D. No. 15-02363) located in McCreary County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air that has passed over vonveyor belt haulage entries to ventilate the active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide (CO) detection system will be installed in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intake air courses. The monitoring devices will be capable of giving warning of a fire for a minimum of four hours should the power fail; a visual alert signal will be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal will sound at 15 ppm above ambient air. All persons will be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and monitoring electrical continuity to detect any malfunctions.

4. The CO system will be visually examined at least once each coal producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

6. The permanent stoppings separating the conveyor belt entries from the intake escapeway will be specifically approved in the Ventilation System and Methane and Dust Control Plan for the mine.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29343 Filed 12-30-86; 8:45am]

BILLING CODE 4510-43-M

[Docket No. M-86-205-C]

Blue Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Blue Diamond Coal Company, P.O. Box 278, Stearns, Kentucky 42647 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Justus Mine (I.D. No. 15-02363) located in McCreary County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly to the return.

2. In a separate petition (M-86-204-C) petitioner proposes to use the belt haulage air to ventilate active working places, and to install an early warning fire detection system using a low-level carbon monoxide system.

3. As an alternate method, petitioner proposes that underground substations, power centers, stationary battery charging stations, pumps, and rectifiers be ventilated with intake air. They will be housed in a fireproof structure equipped with fireproof doors and an automatic fire suppression system. When the temperature in the fireproof structure reaches 165° farenheit or when the carbon monoxide (CO) concentration reaches 15 parts per million (ppm) above the established ambient level for that area, the fireproof doors will close, incoming power to that structure will be deenergized, and a signal will be activiated.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29344 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-206-C]

Blue Diamond Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Blue Diamond Coal Company, P.O. Box 278, Stearns, Kentucky 42647 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minium requirements) to its Justus Mine (I.D. No. 15-02363) located in McCreary County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. In a separate petition (M-86-204-C), petitioner proposes to use the belt haulage air to ventilate active working places.

3. As a alternate method, petitioner proposes to install a carbon monoxide detection system which will provide identification of a fire within a distance of 2,000 feet or less.

4. In support of this request, petitioner states that the sensors will be of a type which will give early warning automatically when a fire occurs in the belt entry, and provide both audible and visual signs that will permit rapid location the fire. The automatic fire detection system will be calibrated to activate the warning signals should the carbon monoxide concentration reach 10 parts per million (ppm) above ambient. The alarm will be activated at an attended surface location where there is two-way communication. The system will be capable of identifying any activated sensor. All persons will be withdrawn to a safe area.

5. If the automatic fire detection system is affected by a power interruption or other malfunction, the belt conveyors will continue to operate only if a qualified person continues to monitor for carbon monoxide at each section loading point in by the malfunctioning sensor.

6. Each carbon monoxide sensor will be visually examined at least once each day during production periods to ensure proper functioning. At least every month the monitors will be checked for operating accuracy with a known concentration of carbon monoxide gas and will be calibrated as necessary.

7. Permanent stoppings will be used to separate the conveyor belt from the intake escapeway.

8. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29345 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-208-C]

Clinchfield Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Clinchfield Coal Company, P.O. Box 4000, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Hurricane Creek Mine (I.D. No. 44-01773) located in Russel County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine was opened into the Jawbone coalbed by six drifts in 1974, and the coal height has varied from 74 to 120 inches. The mine is now retreating and portions of the mineable coal remaining are as low as 48 inches. Jeffrey 405M Ram-type shuttle cars are used in this mine and can be operated safely in mining heights of 60 inches or more, which height includes the canopies.

3. Petitioner states that the use of a canopy on the mine's equipment would result in a diminution of safety for the miners affected because it would cause roof support to be dislodged, decrease the operator's visibility and create discomfort to the operator.

4. For these reasons, petitioner requests a modification of the standard in mining heights less than 60 inches.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29346 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-213-C]

Clinchfield Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Clinchfield Coal Company, P.O. Box 4000, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and conopies) to its Moss No. 3A-2 Portal (I.D. No.44-01642) located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is located in the Jawbone coalbed with consistent undulations in the height of the coal seam, which ranges from 24 to 96 inches in thickness. S & S battery powered scoops, model numbers 482 and 488, are used in this mine and can be operated safely in mining heights of 54 inches or more.

3. Petitioner states that the use of a canopy on the mine's equipment would result in a diminution of safety for the miners affected because it would cause roof support to be dislodged, decrease the operator's visibility and create discomfort to the operator.

4. For these reasons, petitioner a requests a modification of the standard in mining heights less than 54 inches.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson

Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29347 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-203-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Ireland Mine (I.D. No. 46-01438) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air courses be examined in their entirety on a weekly basis.

2. Petitioner states that the southeast portion of the mine has been idle since November of 1979 and as a result, the air courses have deteriorated. All recovery of materials between 8-north and Richmond Shaft has been completed and minimal recovery work remains in the limited area of the southeast portion.

3. As an alternate method petitioner proposes to establish monitoring and bleeder evaluation stations at specified locations to take air and gas measurements. All monitoring stations and the approaches to the stations will be maintained in safe condition. Tests for methane and air quantity will be determined weekly by a certified person. A record of these examinations will be recorded and kept on surface.

4. During the recovery operation, a "Danger Board" will be maintained at the end of the trolley wire and weekly examinations made between the danger board and the 4-north seal area. The bleeder stations will be checked once each week until passed by the recovery operation.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29348 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-219-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburg, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Franklin No. 125 Mine (I.D. No. 33-00963) located in Harrison County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A Summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that due to the ventilation scheme employed at the Franklin Mine, there are areas of the mine that are not immediately adjacent to return aircourses which makes compliance with the standard difficult.

3. Electrical distribution equipment in this situation have primary voltages of 7,200 VAC, with distribution voltages of 480 VAC. The locations of electrical distribution equipment and pumps are necessary for safe and efficient electrical distribution and for safe and efficient mining.

4. As an alternate method, petitioner proposes that:

a. The structures housing transformers, compressors, permanent pumps, battery-chargers, etc., will be fireproofed using concrete block stoppings on the ends, fireproof mine sealant protecting the roof, ribs, and floor. Stoppings will be provided with metal mandoors that are self-closing. If the mandoors are required to remain open to ventilate the structure, the mandoors will be arranged to automatically close upon occurrence of a fire;

b. An automatic fire suppression device, composed of either a water deluge system (in the case of pumps) or dry chemical system (in the case of electrical distribution equipment) will be installed;

c. No combustible materials will be stored or allowed to accumulate in the structure;

d. An alarm system which will provide both audible and visual alarms will be installed in a location adjacent to mine haulage or a location readily observed by persons working nearby; and

e. Fire-fighting equipment will be provided outside of the fire-proof strucures, on the intake side.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29349 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-189-C]

Southern Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Southern Ohio Coal Company, P.O. Box 552, Fairmont, West Virginia 26554 has filed a petition to modify the application of 30 CFR 75.503 (permissible electic face equipment; maintenance) to its Martinka No. 1 Mine (I.D. No. 46-03805) located in Marion County, West Virginia. The petition is

filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded locking device in lieu of padlocks. The springloaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 30, 1987. Copies of the petition are available for inspection at that address.

Dated: December 19, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-29350 Filed 12-30-86; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following packages are being submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Subject: Credit Committee Records—Act IX, section. 3 and 4 of the FCU bylaws (OMB) No. 3133-0058).

Respondents: Federal Credit Unions.

Abstract: All federal credit unions must maintain records of the action taken regarding approval/disapproval of loans.

Subject: Federal Credit Union Bylaws and Certificate Article XIX, section 5 of FCU Bylaws (OMB No. 3133-0081).

Respondents: Federal Credit Unions.

Abstract: Each federal credit union is acquired to maintain a copy of its organization certificate, bylaws, amendments and special authorizations.

Subject: 12 CFR 724.1 Trustees and custodians of Pension Plan (OMB No. 3133-0035).

Respondents: Federal Credit Unions.

Abstract: A federal credit union acting as trustee or custodian of a Keogh plan or individual retirement account must maintain individual records for each participant showing all transactions in detail.

Subject: Special Meetings of Federal Credit Union Board (OMB No. 3133-0080).

Respondents: Federal Credit Unions.

Abstract: Federal credit union bylaws require that the credit union president call a special meeting of the board of directors upon receipt of a written request signed by a majority of the directors.

OMB Desk Officer: Robert Neal.

Copies of the above information collection clearance packages may be obtained by calling the National Credit Union Administration, Administrative Office on (202) 357-1055.

Written comments and recommendations for the listed information collection should be sent directly to the OMB Desk Officer designated above at following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: December 19, 1986.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 86-29297 Filed 12-30-86; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

General Public Utilities; Availability of Draft Supplement to the Programmatic Environmental Impact Statement Related to Decontamination and Disposal of Wastes From March 28, 1979 Accident—Three Mile Island Nuclear Station Unit 2

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Supplement to the Programmatic Environmental Impact Statement (NUREG-0638, Supplement 2) related to decontaminated disposal of radioactive wastes resulting from March 28, 1979, accident, Three Mile Island, is available for inspection by the public in the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and in the NRC TMI Office, 100 Brown Street, Middletown, PA 17057. This draft supplement, prepared by the Commission's Office of Nuclear Reactor Regulation, addresses the environmental impacts associated with various proposals for the disposal of slightly contaminated water presently stored on the Three Mile Island site. Requests for copies of the Draft Supplement should be addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control.

Pursuant to 10 CFR Part 51, interested persons may submit comments on the Draft Supplement to the Programmatic Environmental Impact Statement (PEIS) for the Commission's consideration. Federal, State, and Local agencies are being provided with copies of the Draft Supplement to the PEIS. Comments are due by February 28, 1987. Comments by Federal, State and Local officials, or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, DC, and the NRC TMI Office, 100 Brown Street, Middletown, PA 17057. Upon consideration of comments, the Commission's staff will prepare a final Supplement to the PEIS, the availability of which will be published in the **Federal Register.**

Comments on the Draft Supplement to the PEIS should be addressed to Michael T. Masnik, Three Mile Island Cleanup Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 24th day of December 1986.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Acting Director, Three Mile Island-2 Cleanup Project Directorate, Office of Nuclear Reactor Regulation.

[FR Doc. 86-29385 Filed 12-30-86; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-277 and 50-278]

Philadelphia Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of an exemption from the requirements of Appendix R of 10 CFR Part 50 to the Philadelphia Electric Company (PECO/the Licensee), for the Peach Bottom Atomic Power Station, Units 2 and 3 located in York County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempted from the requirements of sections II.G.2.a and III.G.2.b of Appendix R to 10 CFR Part 50 to the extent that certain specific areas, cables or equipment will be separated by less than a 3 hour rated fire barrier, automatic fire suppression systems will not be required in part of two plant areas and certain structural steel members forming a part of or supporting fire barriers may have a fire resistance less than the barrier.

The Need for the Proposed Action

Because of low combustible loading in the locations being exempted from separation, barrier protection or automatic fire suppression, a fire in one of these areas would be of low intensity and short duration. Furthermore, safe shutdown could be effected if a fire occurred in one of these areas because of the passive protection afforded by such separation and barriers as exist, and because of the provision of detection systems to alert the fire brigade. The fire brigade could then take action to extinguish the fire. For all of the requested exemptions, the licensee has provided analyses which show that either the existing protection features, alternative modifications and mitigating features or compensatory measures provide adequate fire protection for the maximum potential combustible loading in the area. Application of the Appendix R regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule and would not significantly enhance the level of fire protection in the plant. Compliance with the regulation would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted and additional costs significantly in excess of those incurred by others similarly situated, without a corresponding increase in the level of improvement in fire protection for the facilities.

Environmental Impact of the Proposed Action

The proposed action would not impact the ability to effect safe shutdown of the plant in the event of a fire and would provide an acceptable level of safety, equivalent to that attained by compliance with Section III.G of Appendix R to 10 CFR Part 50. On this basis, the Commission concludes there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Peach Bottom Atomic Power Station, Units 2 and 3.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated September 17, 1984, March 29, May 23, June 6, September 24, 1985 and March 7, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania, 17126.

Dated at Bethesda, Maryland, this 23rd day of December, 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate No. 2, Division of BWR Licensing.

[FR Doc. 86-29386 Filed 12-30-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-28, issued to Vermont Yankee Nuclear Power Corporation (the licensee), for operation of the Vermont Yankee Nuclear Power Station, located in Vernon, Vermont.

In accordance with the licensee's application dated April 25, 1986, the proposed amendment would revise the Vermont Yankee Technical Specifications to authorize the licensee to increase the storage capacity of the spent fuel pool from the present capacity of 2000 fuel assemblies to 2870 fuel assemblies. The change would be accomplished by the installation of high density fuel rack modules with center to center clearances between cells of 6.218 inches compared to the current design of 7.0 inches. The racks would utilize a neutron absorbing material between cells to assure a subcritical configuration.

On June 18, 1986, the Commission issued a Bi-Weekly Notice of Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations (51 FR 22226) which included notice concerning the proposed amendment of the Vermont Yankee license (51 FR 22246). That Notice contained the Commission's proposed determination that the requested amendment involved no significant hazards considerations, offered an opportunity for comments on the Commission's proposed determination and offered an opportunity for the applicant to request a hearing on the amendment and for persons whose interest may be affected to petition for leave to intervene. Comments on the proposed

determination were received from the New England Coalition on Nuclear Pollution.

Due to oversight, the June 18, 1986 Notice did not provide notice that this application involves a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982. Such notice is required by Commission regulations, 10 CFR 2.1107.

The Commission hereby provides such notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, is authorized to use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 (October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G continued to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

By January 30, 1987, the licensee, if it wishes to invoke the hybrid hearing procedures, may file a request for such hearing with respect to issuance of the proposed amendment or any person whose interest may be affected by this proceeding and who wishes to invoke the hybrid hearing procedures and to participate as a party in such proceeding, must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene seeking to invoke hybrid hearing procedures in accordance with this notice is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. Requests for hearing or petitions for leave to intervene which do not seek to invoke the hybrid hearing procedures are not authorized by this notice and would be considered nontimely.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a signifiicant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for an opportunity for a hearing after issuance. The Commission expects

that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene that seeks to invoke the hybrid hearing procedures in accordance with this notice must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to John A. Ritcher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 25, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Dated at Bethesda, Maryland, this 23rd day of December, 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate No. 2, Division of BWR Licensing.

[FR Doc. 86-29384 Filed 12-30-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co.; Surry Power Station, Units No. 1 and 2; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating Licenses No. DPR-32 and No. DPR-37 issued to Virginia Electric and Power Company (the licensee), for the operation of Surry Power Station, Units No. 1 and 2, located in Surry County, Virginia.

Identification of Proposed Action

The amendment would consist of changes to the operating license authorizing an extension in the expiration date for the Unit 1 Facility Operating License DPR-32 from June 25, 2008, to May 25, 2012, and for the Unit 2 Facility Operating License DPR-37 from June 25, 2008, to January 29, 2013.

The amendment to the licenses is responsive to the licensee's application dated August 22, 1986, as supplemented by letters dated December 5, and December 10, 1986. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Dates of Facility Operating License Nos. DPR-32 and DPR-37 Virginia Electric Power Company, Surry Power Station, Units No. 1 and No. 2," dated December 24, 1986.

Summary of Environmental Assessment

The NRC staff has reviewed the potential environmental impacts of the proposed change in the expiration dates of the Operating Licenses for Surry Power Station, Unit Nos. 1 and 2. This evaluation considered the previous environmental studies, including the "Final Environmental Statements Related to Operation of Surry Power Station, Units 1 and 2", dated May 1972 and June 1972 and more recent NRC policy.

Radiological Impacts

Although the population in the vicinity of Surry, Units 1 and 2 has increased slightly, the site requirements of 10 CFR Part 100 are still met with regard to Exclusion Area Boundary, Low Population Zone, and nearest population center distances, and such changes do not significantly increase any environmental impacts. The net annualized environmental impacts attributable to the uranium fuel cycle, which form the basis for Table S3 of 10 CFR Part 51, remain essentially unchanged from those addressed in the FES. The annual environmental impacts attributable to transportation of fuel and waste to and from the Surry Power Station, with respect to normal conditions of transport and possible accidents in transport, will be bound by the impact estimates discussed in the Surry FES. In addition, the proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to normal plant operation, the licensee complies with NRC guidance and requirements for keeping radiation exposures "as low as is reasonably achievable" (ALARA) for occupational exposures and for radioactivity in effluents. The licensee would continue to comply with these requirements during any additional years of facility operation and also apply advanced technology where available and appropriate. Accordingly, radiological impacts on man, both onsite and offsite, are not significantly more severe than previously estimated in the FES and our previous cost-benefit conclusions remain valid.

Non-Radiological Impacts

The NRC review identified no additional degradation of the habitat surrounding Surry Power Station with regard to indigenous plant and animal species for the additional years of facility operation. In addition, the National Pollutant Discharge Elimination System permit provides additional environmental protection.

Finding of No Significant Impact

The staff has reviewed the proposed change to the expiration dates of the Surry Power Station, Units 1 and 2 Facility Operating Licenses relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendments will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendments.

For further details with respect to this action, see (1) the request for amendments dated August 22, 1986 as supplemented by letters dated December 5, and December 10, 1986, (2) the Final Environmental Statements Related to the Operation of Surry Power

Station, Units 1 and 2, dated May 1972 and June 1972, and (3) the Environmental Assessment dated December 24, 1986., These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Bethesda, Maryland, this 24th day of December, 1986.

For the Nuclear Regulation Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-29383 Filed 12-30-86; 8:45 a.m.]

BILLING CODE 7590-01-M

[Docket No. 40-8502]

Westinghouse Electric Corp.; Draft Finding of No Significant Impact Regarding the Renewal of Source and Byproduct Material License SUA-1341 for Operation of Westinghouse Electric Corporation's, Irigaray Mine, Johnson County, WY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of draft finding of no significant impact.

(1) Proposed Action

The proposed administrative action is to renew Source and Byproduct Material License SUA-1341 authorizing Westinghouse Electric Corporation to resume operation of their Irigaray Mine located in Johnson County, Wyoming.

(2) Reasons for Draft Finding of No Significant Impact

An Environmental Assessment was prepared by the staff at the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. The Environmental Assessment performed by the Commission's staff evaluated potential impacts on-site and off-site due to radiological releases which may occur during the course of the operation. Documents used in preparing the assessment included operational data from the licensee's prior mining activities, the licensee's renewal application dated September 28, 1983, as revised by submittal dated October 13, 1985, and the Final Environmental Statement prepared by the Commission staff dated September 1978. Based on this assessment, the Commission has determined that no significant impact will result from the proposed action, and therefore, an Environmental Impact Statement is not warranted.

The following statements support the draft finding of no significant impact and summarize the conclusions resulting from the environmental assessment.

(a) The ground-water monitoring program in effect at the Irigaray mine is sufficient to monitor operations and will provide a warning system that will minimize any impact on ground water. Furthermore, additional aquifer testing indicates that the production zone is adequately confined, thereby assuring hydrologic control of mining solutions.

(b) Radiological effluents from the proposed operation of the well field and processing plant will be within regulatory limits and will be continuously monitored.

(c) The environmental monitoring program is comprehensive and will detect any radiological releases resulting from the operation.

(d) Radioactive wastes will be minimal and will be disposed of at an approved site in accordance with applicable Federal and state regulations.

(e) Ground water, based upon previous testing, can be restored to class of use standards.

In accordance with 10 CFR 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a draft finding of no significant impact and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register**.

This finding, together with the environmental assessment setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Dated at Denver, Colorado, this 16th day of December, 1986.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Chief, Licensing Branch 1, Uranium Recovery Field Office Region IV.

[FR Doc. 86-29387 Filed 12-30-86; 8:45 am]

BILLING CODE 7590-01-M

State of Illinois; Staff Assessment of Proposed Agreement Between the NRC and the State of Illinois

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed agreement with State of Illinois.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission is publishing for public comment the NRC staff assessment of a proposed agreement received from the Governor of the State of Illinois for the assumption of certain of the Commission's regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended. Comments are requested on the public health and safety aspects of the proposal.

A staff assessment of the State's proposed program for control over sources of radiation is set forth below as supplementary information to this notice. A notice of the proposed agreement, program narrative, including the referenced appendices, applicable State legislation and Illinois regulations, is available for public inspection in the Commission's public document room at 1717 H Street NW., Washington, DC, the Commission's Region III Office, 799 Roosevelt Road, Building No. 4, Glen Ellyn, Illinois, and the Illinois Department of Nuclear Safety, 1035 Outer Park Drive, Springfield, Illinois. Exemptions from the Commission's regulatory authority, which would implement this proposed agreement, have been published in the **Federal Register** and codified as Part 150 of the Commission's regulations in Title 10 of the Code of Federal Regulations.

DATE: Comments must be received on or before January 30, 1987.

ADDRESSES: Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Joel O. Lubenau, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301-492-9887.

SUPPLEMENTARY INFORMATION:

Assessment of Proposed Illinois Program to Regulate Certain Radioactive Materials Pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

The Commission has received a proposal from the Governor of Illinois for the State to enter into an agreement with the NRC whereby the NRC would relinquish and the State would assume certain regulatory authority pursuant to section 274 of the Atomic Energy Act of 1954, as amended.

Section 274e of the Atomic Energy Act of 1954, as amended, requires that the

terms of the proposed agreement be published for public comment once each week for four consecutive weeks. Accordingly, this notice will be published four times in the Federal Register.

I. Background

A. Section 274 of the Atomic Energy Act of 1954, as amended, provides a mechanism whereby the NRC may transfer to the States certain regulatory authority over agreement materials [1] when a State desires to assume this authority and the Governor certifies that the State has an adequate regulatory program, and when the Commission finds that the State's program is compatible with that of the NRC and is adequate to protect the public health and safety. Section 274g directs the Commission to cooperate with the States in the formulation of standards for protection against radiation hazards to assure that State and Commission programs for radiation protection will be coordinated and compatible. Further, section 274j provides that the Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

B. In a letter dated October 2, 1986, Governor James P. Thompson of the State of Illinois requested that the Commission enter into an agreement with the State pursuant to section 274 of the Atomic Energy Act of 1954, as amended. The Governor certified that the State of Illinois has a program for control of radiation hazards which is adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State of Illinois desires to assume regulatory responsibility for such materials. The text of the proposed agreement is shown in Appendix A.

The specific authority requested is for (1) byproduct material as defined in section 11e.(1) of the Act, (2) source material, (3) special nuclear material in quantities not sufficient to form a critical mass and (4) permanent disposal of low-level waste containing one or more of the foregoing materials but not containing uranium and thorium mill tailings (byproduct material as defined in section 11e.(2) of the Act. The State does not wish to assume authority over uranium recovery activities. The State, however, reserves the right to apply at a future date to NRC for an amended agreement to assume authority in this area. The nine articles of the proposed agreement cover the following areas:

I. Lists the materials covered by the agreement.

II. Lists the Commission's continued authority and responsibility for certain activities.

III. Allows for future amendment of the agreement.

IV. Allows for certain regulatory changes by the Commission.

V. References the continued authority of the Commission for common defense and security for safeguard purposes.

VI. Pledges the best efforts of the Commission and the State to achieve coordinated and compatible programs.

VII. Recognizes reciprocity of licenses issued by the respective agencies.

VIII. Sets forth criteria for termination or suspension of the agreement.

C. Ill. Rev. Stat. 1985, ch. 127, par 63b17, the enabling statute for the Illinois Department of Nuclear Safety authorizes the Department to issue licenses to, and perform inspections of, users of radioactive materials under the proposed agreement and otherwise carry out a total radiation control program. Illinois regulations for radiation protection were adopted on September 25, 1986 under authority of the enabling statute and provide standards, licensing, inspection, enforcement and administrative procedures for agreement and non-agreement materials. Pursuant to § 330.360 the regulations will apply to agreement materials on the effective date of the agreement. The regulations provide for the State to license and inspect users of naturally-occurring and accelerator-produced radioactive materials.

D. Illinois is one of two States with a cabinet-level agency devoted exclusively to radiation safety and control. Illinois' role in radiation safety is traceable to 1955 when the Illinois General Assembly created the Atomic Power Investigating Commission. The Illinois Department of Nuclear Safety Program provides a comprehensive program encompassing radiation protection regulation for radioactive materials and machine produced radiation, lasers, low-level radioactive waste management, surveillance of transportation of radioactive materials and environmental radiation, coordination of State government functions concerning nuclear power and emergency preparedness.

E. The proposed Illinois Agreement will cover several unique facets. It will include (1) regulation of a low-level waste disposal site which is no longer accepting low-level radioactive waste for disposal (Sheffield), (2) regulation of a new regional low-level waste disposal facility, (3) regulation of one of only two licensed uranium conversion plants in the United States (Allied-Chemical) and (4) assumption of regulatory responsibility for off-site source material resulting from operation of the Kerr-McGee West Chicago Rare Earths Facility (including such material which is, or may be, stored on the Kerr-McGee site). Jurisdiction over the tailings materials at this site (by-product material as defined by section 11e(2) of the Act) will remain with NRC. The State's proposed programs for low-level radioactive waste disposal and the Allied Chemical plant are assessed under Criteria nos. 9, "Radioactive Waste Disposal" and 20 "Personnel." The disposition of the regulatory responsibility for the Kerr-McGee radioactive materials resulting from the operation of the Rare Earths Facility is covered in the assessment under Crtierion 25, "Existing NRC Licenses and Pending Applications."

Under the proposed agreement jurisdiction for health and safety for Allied Chemical's plant would be transferred to Illinois. The Allied Chemical plant is one of 2 plants in the United States licensed to convert uranium "yellowcake" to UF_6 NRC staff is reviewing the common defense and security significance of the Allied Chemical plant in consultation with appropriate Federal agencies. Section 274 agreements are approved by the Commission when, among other things, the proposed State program is adequate to protect the public health and safety. The NRC staff assessment finds the proposed Illinois program will provide adequately for public health and safety. The Atomic Energy Act, as amended, however, states that such agreements shall not affect the Commission's authority to protect the common defense and security. The decision on whether to exclude the Allied Chemical plant from the Agreement will be made by the Commission concurrent with its decision on the Illinois request for an Agreement.

II. NRC Staff Assessment of Proposed Illinois Program for Control of Agreement Materials

Reference: Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and

[1] A. Byproduct materials as defined in 11e(1)
B. Byproduct materials as defined in 11e(2)
C. Source materials; and
D. Special nuclear materials in quantities not sufficient to form a critical mass

Assumption Thereof by States Through Agreement.[2]

Objectives

1. Protection. A State regulatory program shall be designed to protect the health and safety of the people against radiation hazards.

Based upon the analysis of the State's proposed regulatory program the staff believes the Illinois proposed regulatory program for agreement materials is adequately designed to protect the health and safety of the public against radiation hazards.

Reference: Illinois Program Statement, Application for Agreement State Status.

Radiation Protection Standards

2. *Standards.* The State regulatory program shall adopt a set of standards for protection against radiation which shall apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass.

Statutory authority to formulate and promulgate rules for controlling exposure to sources of radiation is contained in the enabling statute. In accordance with that authority, the State adopted radiation control regulations on September 25, 1986 which include radiation protection standards which would apply to byproduct, source and special nuclear materials in quantities not sufficient to form a critical mass upon the effective date of an agreement between the State and the Commission pursuant to section 274b of the Atomic Energy Act of 1954, as amended.

Reference: 32 ILL. ADM. CODE Parts 310, 320, 330, 340, 341, 350, 351, 370, 400 and 601.

3. *Uniformity in Radiation Standards.* It is important to strive for uniformity in technical definitions and terminology, particularly as related to such things as units of measurement and radiation dose. There shall be uniformity on maximum permissible doses and levels of radiation and concentrations of radioactivity, as fixed by 10 CFR Part 20 of the NRC regulations based on officially approved radiation protection guides.

Technical definitions and terminology contained in the Illinois Radiation Control Regulations including those related to units of measurement and radiation doses are uniform with those contained in 10 CFR Part 20.

Reference: 32 ILL. ADM. CODE 310.20, 3410.20, 350.30, 351.30, 370.20, and 601.20.

[2] NRC Statement of Policy published in the Federal Register January 23, 1981 (46 FR 7540–7546), a correction was published July 16, 1981 (46 FR 36969) and a revision of Criterion 9 published in the Federal Register July 21, 1983 (48 FR 33376).

4. *Total Occupational Radiation Exposure.* The regulatory authority shall consider the total occupational radiation exposure of individuals, including that from sources which are not regulated by it.

The Illinois regulations cover all sources of radiation within the State's jurisdiction and provide for consideration of the total radiation exposure of individuals from all sources of radiation in the possession of a licensee or registrant.

Reference: 32 ILL. ADM. CODE 340.1010 to 340.1060.

5. *Surveys, Monitoring.* Appropriate surveys and personnel monitoring under the close supervision of technically competent people are essential in achieving radiological protection and shall be made in determining compliance with safety regulations.

The Illinois requirements for surveys to evaluate potential exposures from sources of radiation and the personnel monitoring requirements are uniform with those contained in 10 CFR Part 20. Additionally, for personnel dosimeters (except extremity dosimeters and pocket ionization chambers) that require processing, the accreditation criteria in the January 1, 1985 revision of 15 CFR 7b and in American National Standards Institute N13.11–1983, 1983 edition, must be met.

References: 32 ILL. ADM. CODE 340.2010, 340.2020 and 340.2070.

6. *Labels, Signs, Symbols.* It is desirable to achieve uniformity in labels, signs, and symbols, and the posting thereof. However, it is essential that there be uniformity in labels, signs, and symbols affixed to radioactive products which are transferred from person to person.

The prescribed radiation labels, signs and symbols are uniform with those contained in 10 CFR Parts 20, 30 thru 32 and 34. The Illinois posting requirements are also uniform with those of Part 20.

References: 32 ILL. ADM. CODE 330.220(g), 330.220(i), 330.280(d), 330.280(g), 340.2030 and .2040, 350.1050.

7. *Instruction.* Persons working in or frequenting restricted areas shall be instructed with respect to the health risks associated with exposure to radioactive materials and in precautions to minimize exposure. Workers shall have the right to request regulatory authority inspections as per 10 CFR 19, Section 19.16 and to be represented during inspections as specified in Section 19.14 of 10 CFR 19.

The Illinois regulation contain requirements for instruction and notices to workers that are uniform with those of 10 CFR Part 19.

Reference: 32 ILL. ADM. CODE Part 400.

8. *Storage.* Licensed radioactive material in storage shall be secured against unauthorized removal.

The Illinois regulations contain a requirement for security of stored radioactive material.

Reference: 32 ILL ADM. CODE 340.2060.

9. *Radioactive Waste Disposal.* (a) Waste disposal by material users. The standards for the disposal of radioactive References: 32 ILL. ADM. CODE 340.1060, 340.3010 to 340. 3110, Part 601; Section 151(a)(2), Pub. L. 97–425.

10. *Regulations Governing Shipment of Radioactive Materials.* The State shall to the extent of its jurisdiction promulgate regulations applicable to the shipment of radioactive materials, such regulations to be compatible with those established by the U.S. Department of Transportation and other agencies of the United States whose jurisdiction over interstate shipment of such materials necessarily continues. State regulations regarding transportation of radioactive materials must be compatible with 10 CFR Part 71.

The Illinois regulations are uniform with those contained in NRC regulations 10 CFR Part 71.

References: 32 ILL. ADM. CODE Part 341.

11. *Records and Reports.* The State regulatory program shall require that holders and users of radioactive materials (a) maintain records covering personnel radiation exposures, radiation surveys, and disaposals of materials; (b) keep records of the receipt and transfer of the materials; (c) report significant incidents involving the materials, as prescribed by the regulatory authority; (d) make available upon request of a former employee a report of the employee's exposure to radiation; (e) at request of an employee advise the employee of his or her annual radiation exposure; and (f) inform each employee in writing when the employee has received radiation exposure in excess of the prescribed limits.

The Illinois regulations require the following records and reports licensees and registrants:

(a) Records covering personnel radiation exposures, radiation surveys, and disposals of materials.

(b) Records of receipt and transfer of materials.

(c) Reports concerning incidents involving radioactive materials.

(d) Reports to former employees of their radiation exposure.

(e) Reports to employees of their annual radiation exposure.

(f) Reports to employees of radiation exposure in excess of prescribed limits.

Reference: 32 ILL. ADM. CODE 310.40, 340.4010, 340.4030, 340.4050 and 400.130.

12. *Additional Requirements and Exemptions.* Consistent with the overall criteria here enumerated and to accommodate special cases and circumstances, the State regulatory authority shall be authorized in individual cases to impose additional requirements to protect health and safety, or to grant necessary exemptions which will not jeopardize health and safety.

The Illinois Department of Nuclear Safety is authorized to impose upon any licensee or registrant by rule, regulation, or order such requirements in addition to those established in the regulations as it deems appropriate or necessary to minimize danger to public health and safety or property.

Reference: 32 ILL. ADM. CODE 310.70.

The Department may also grant such exemptions from the requirements of the regulations as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

Reference: 32 ILL. ADM. CODE 310.30.

Prior Evaluation of Uses of Radioactive Materials

13. *Prior Evaluation of Hazards and Uses, Exceptions.* In the present state of knowledge, it is necessary in regulating the possession and use of byproduct, source and special nuclear materials that the State regulatory authority require the submission of information on, and evaluation of, the potential hazards and the capability of the user or possessor prior to his receipt of the materials. This criterion is subject to certain exceptions and to continuing reappraisal as knowledge and experience in the atomic energy field increase. Frequently there are, and increasingly in the future there may be, categories of materials and uses as to which there is sufficient knowledge to permit possession and use without prior evaluation of the hazards and the capability of the possessor and user. These categories fall into two groups—those materials and uses which may be completely exempt from regulatory controls, and those materials and uses in which sanctions for misuse are maintained without pre-evaluation of the individual possession or use. In authorizing research and development or other activities involving multiple uses of radioactive materials, where an institution has people with extensive training and experience, the State regulatory authority may wish to provide a means for authorizing broad use of materials without evaluating each specific use.

Prior to the issuance of a specific license for the use of radioactive materials, the Illinois Department of Nuclear Safety will require the submission of information on, and will make an evaluation of, the potential hazards of such uses, and the capability of the applicant.

References: 32 ILL. ADM. CODE 330.240 to 330.340 and Part 601; Illinois Program Statement, Sections II.B.1(a)(1) "Licensing," II.C.1(a)(3) "Regulating Low-Level Waste Disposal" and III.B. "Licensing."

Provision is made for the issuance of general licenses for byproduct, source and special nuclear materials in situations where prior evaluation of the licensee's qualifications, facilities, equipment and procedures are not required. The regulations grant general licenses under the same circumstances as those under which general licenses are granted in the Commission's regulations.

References: 32 ILL. ADM. CODE 330.210 and 330.220.

Provision is made for exemption of certain source and other radioactive materials and devices containing radioactive materials. The exemptions for materials covered by the Agreement are the same as those granted by NRC regulations.

References: 32 ILL. ADM. CODE 330.30 and 330.40.

14. *Evaluation Criteria.* In evaluating a proposal to use radioactive materials, the regulatory authority shall determine the adequacy of the applicant's facilities and safety equipment, his training and experience in the use of the materials for the purpose requested, and his proposed administrative controls. States should develop guidance documents for use by license applicants. This guidance should be consistent with NRC licensing and regulatory guides for various categories of licensed activities.

In evaluating a proposal to use agreement materials, the Illinois Department of Nuclear Safety will determine that:

(1) The applicant is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with the regulations in such a manner as to minimize danger to public health and safety or property;

(2) The applicant's proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property; and

(3) The issuance of the license will not be inimical to the health and safety of the public.

Other special requirements for the issuance of specific licenses are contained in the regulations.

References: 32 ILL. ADM. CODE 330.250 to 330.280 and Part 601; Illinois Program Statement, Sections II.B.1.a(1) "Licensing" II.C.1.(a) "Low-Level Radioactive Waste Management" and III.B "Licensing."

15. *Human Use.* The use of radioactive materials and radiation on or in humans shall not be permitted except by properly qualified persons (normally licensed physicians) possessing prescribed minimum experience in the use of radioisotopes or radiation.

The Illinois regulations require that the use of radioactive materials (including sealed sources) on or in humans shall be by a physician having substantial experience in the handling and administration of radioactive material and, where applicable, the clinical management of radioactive patients.

Reference: 32 ILL. ADM. CODE 330.260(a), (b), and (c).

Inspection

16. *Purpose, Frequency.* The possession and use of radioactive materials shall be subject to inspection by the regulatory authority and shall be subject to the performance of tests, as required by the regulatory authority. Inspection and testing is conducted to determine and to assist in obtaining compliance with regulatory requirements. Frequency of inspection shall be related directly to the amount and kind of material and type of operation licensed, and it shall be adequate to insure compliance.

Illinois materials licensees will be subject to inspection by the Department of Nuclear Safety. Upon instruction from the Department, licensees shall perform or permit the Department to perform such reasonable tests and surveys as the Department deems appropriate or necessary. The frequency of inspections is dependent upon the type and scope of the licensed activities and will be at least as frequent as inspections of similar licensees by NRC. Generally, inspections will be unannounced.

References: 32 ILL. ADM. CODE 310.50, 310.60, 310.70 and 400.140(a); Illinois Program Statement, Section II.B.1.(a)(2) "Inspection and Compliance," Section III.C, "Inspection and Enforcement" and Section IV.C., "Division of Responsibilities."

17. *Inspections Compulsory.* Licensees shall be under obligation by law to provide access to inspectors.

Illinois regulations state that licensees shall afford the Department at all

reasonable times opportunity to inspect sources of radiation and the premises and facilities wherein such sources of radiation are used or stored.

Reference: 32 ILL. ADM. CODE 310.50.

18. *Notification of Results of Inspection.* Licensees are entitled to be advised of the results of inspections and to notice as to whether or not they are in compliance.

Following Department inspections, each licensee will be notified in writing of the results of the inspection. The letters and written notices indicate if the licensee is in compliance and if not, list the areas of noncompliance.

Reference: Illinois Program Statement, Section II.B.1.(a)(2) "Inspection and Compliance," Section III.C, "Inspection and Enforcement" and Section IV.C., "Division of Responsibilities."

Enforcement

19. *Enforcement.* Possession and use of radioactive materials should be amenable to enforcement through legal sanctions, and the regulatory authority shall be equipped or assisted by law with the necessary powers for prompt enforcement. This may include, as appropriate, administrative remedies looking toward issuance of orders requiring affirmative action or suspension or revocation of the right to possess and use materials, and the impounding of materials; the obtaining of injunctive relief; and the imposing of civil or criminal penalties.

The Illinois Department of Nuclear Safety is equipped with the necessary powers for prompt enforcement of the regulations. Where conditions exist that create a clear presence of a hazard to the public health that requires immediate action to protect human health and safety, the Department may issue orders to reduce, discontinue or eliminate such conditions. The department actions may also include impounding of radioactive material, imposition of a civil penalty, revocation of a license, and requesting the State Attorney General to seek injunctions and convictions for criminal violations.

References: 32 ILL. ADM. CODE 310.70, 310.80, 310.90, 330.500; Ill. Rev. Stat. 1985, ch. 111½, pars. 219, 222, 223 and 224; Illinois Program Statement, Section II.B.1.(a)(2), "Inspection and Compliance," Section III.C, "Inspection and Enforcement" and Section IV.C., "Division of Responsibilities."

Personnel

20. *Qualifications of Regulatory and Inspection Personnel.* The regulatory agency shall be staffed with sufficient trained personnel. Prior evaluation of applications for licenses or authorizations and inspection of licensees must be conducted by persons possessing the training and experience relevant to the type and level of radioactivity in the proposed use to be evaluated and inspected.

To perform the functions involved in evaluation and inspection, it is desirable that there be personnel educated and trained in the physical and/or life sciences, including biology, chemistry, physics and engineering, and that the personnel have had training and experience in radiation protection. The person who will be responsible for the actual performance of evaluation and inspection of all of the various uses of byproduct, source and special nuclear material which might come to the regulatory body should have substantial training and extensive experience in the field of radiation protection.

It is recognized that there will also be persons in the program performing a more limited function in evaluation and inspection. These persons will perform the day-to-day work of the regulatory program and deal with both routine situations as well as some which will be out of the ordinary. These people should have a bachelor's degree or equivalent in the physical or life sciences, training in health physics, and approximately two years of actual work experience in the field of radiation protection.

The foregoing are considered desirable qualifications for the staff who will be responsible for the actual performance of evaluation and inspection. In addition, there will probably be trainees associated with the regulatory program who will have an academic background in the physical or life sciences as well as varying amounts of specific training in radiation protection but little or no actual work experience in this field. The background and specific training of these persons will indicate to some extent their potential role in the regulatory program. These trainees, of course, could be used initially to evaluate and inspect those applications of radioactive materials which are considered routine or more standardized from the radiation safety standpoint, for example, inspection of industrial gauges, small research programs, and diagnostic medical programs. As they gain experience and competence in the field, the trainees could be used progressively to deal with the more complex or difficult types of radioactive material applications. It is desirable that such trainees have a bachelor's degree or equivalent in the physical or life sciences and specific training in radiation protection. In determining the requirement for academic training of individuals in all of the foregoing categories, proper consideration should be given to equivalent competency which has been gained by appropriate technical and radiation protection experience.

It is recognized that radioactive materials and their uses are so varied that the evaluation and inspection functions will require skills and experience in the different disciplines which will not always reside in one person. The regulatory authority should have the composite of such skills either in its employ or at its command, not only for routine functions, but also for emergency cases.

a. *Radioactive Materials Program.*

i. *Personnel.*

There are approximately 890 NRC specific licenses in the State of Illinois. Under the proposed agreement, the State would assume responsibility for about 800 of these licenses. The Department's Division of Nuclear Materials is currently staffed with 13 professional persons and has one vacancy. Including the Manager of the Office of Radiation Safety (in which the Division of Nuclear Materials is located), four individuals will be assigned management and supervisory duties in the materials program. Exclusive of the low-level radioactive waste regulatory program and the regulatory oversight for a uranium conversion plant (discussed below) we estimate the State will need to apply between 7.9 to 12 staff-years of professional effort to the radioactive materials program. Illinois will apply about 14.4 staff-years to this program. The personnel together with summaries of their assigned responsibilities, training and experience are as follows (except as noted percentage of time devoted to the radioactive materials program will be 90% or more):

Terry R. Lash: Director, Illinois Department of Nuclear Safety, Governor's Designated Liaison to NRC. (10% of time devoted to materials program).

Training:

Ph.D.—Yale University (1970)
—Molecular Biophysics and Biochemistry, Yale University
M.Ph.—Molecular Biophysics and Chemistry
—Yale University (1967)
B.A.—Reed College (1965)
—Physics Major

Experience:

1984—Present: Director, Illinois Department of Nuclear Safety
1983—1984: Deputy Director, Illinois Department of Nuclear Safety
1983—1983: Independent Consultant

1982—1983: Science Director, Scientists' Institute for Public Information, New York City
1981—1982: Independent Consultant
1980—1981: Director, Science and Public Policy, The Keystone Center, Dillon, Colorado
1972—1980: Staff Scientist, Natural Resources Defense Council, San Francisco, California
1970—1972: Postdoctoral Research Fellow, Yale University Medical School, New Haven, Connecticut

Paul D. Eastvold: Manager, Office of Radiation Safety. Responsible for managing the programs, functions and activities of four technical divisions: Nuclear Materials, Electronic Products, Radiologic Technologist Accreditation and Medical Physics (33% of time devoted to materials program).

Training:

B.S.—University of Iowa (1970)
—General Science/Nuclear Medicine Technology
"Specific Topics in Licensing: Contingency Plans," US NRC, San Francisco, CA (1986)
"Impact of Proposed Changes to 10 CFR 20," Technical Management Services, Inc., Gaithersburg, Maryland (1986)
"Large Irradiation Radiation Safety Workshop," US NRC, New Jersey (1985)
"Incinertion of Radioactive Material Workshop," University of California (1984)
"Transportation of Radioactive Materials," US NRC, Illinois (1983)
"Recognition, Evaluation, and Control of Non-Ionizing Radiation," US Dept. of Labor, Illinois (1981)
"Inspection Procedures," US NRC, Illinois (1980)
"Safety Aspects of Industrial Radiography," US NRC, Louisiana (1980)
"Quality Assurance in Nuclear Medicine," US FDA, Maryland (1979)
"Health Physics in Radiation Accidents," Oak Ridge Associated Universities, Tennessee (1979)
"Laser Safety Seminar," US Food and Drug Admin., Wisconsin (1979)
"Radiological Response Operations Training Course," US NRC, Nevada (1978)
"Radiopharmacies—Problems and Solutions," Univ. of Southern California, California (1978)
"Radiological Emergency Response Planning Course," US NRC, Minnesota (1977)
"Health Physics and Radiation Protection," US NRC, Tennessee (1977)
"Fundamentals of Non-Ionizing Radiation Protection," U.S. Food and Drug Administration, Maryland (1973)
"Licensing Course—Byproduct, Source, and Special Nuclear Materials," US NRC, Maryland (1972)

Experience:

1980—Present: Illinois Department of Nuclear Safety
1971—1980: Illinois Department of Public Health, Division of Radiological Health
1970—1971: University of Iowa Radiation Protection Office

Michael Ewan: Chief, Division of Nuclear Materials. Manages the Division including supervision of staff and establishment of program objectives.

Training:

M.A.—Sangamon State University , IL (1980)
—Business Administration
B.S.—University of Iowa (1971)
—General Science/Nuclear Medicine Technology
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"Special Topics in Licensing: Contingency Plans," US NRC, San Francisco, CA (1986)
"Incineration Basics," Univ. of California, Irvine, Charlotte, N.C. (1986)
"Basic Supervision," Keye Productivity Center, Springield, Illinois (1986)
"Impact of Proposed Changes to 10 CFR 20," Technical Management Services, Inc., Gaithersburg, Maryland (1986)
"Transportation of Radioactive Materials," US DOE, Illinois (1985)
"Technical Writing," Richmond Staff Development, Illinois (1985)
"Health Physics and Radiation Protection," Oak Ridge Associated Universities, Tennessee (1985)
"Gas and Oil Well Logging," US NRC, Texas (1984)
"Licensing Practices and Procedures," US NRC, Maryland (1984)
"Transportation of Radioactive Materials," US NRC, Illinois (1983)
"Current Applications of Nuclear Imaging," Siemens Gammasonics, Inc., Illinois (1981)
"Nuclear Cardiology," Univ. of Wisconsin, Wisconsin (1980)

Experience:

1982–Present: Illinois Department of Nuclear Safety
1973–1982: St. John's Hospital, Springfield, Illinois
1981: Lincoln Land Community College, Springfield, Illinois (Instructor)
1973–1977: Nuclear Medicine Institute, Ohio (Affiliate Instructor)
1971–1973: Wesley Medical Center, Kansas

Jou-Guang (Joe) Hwang: Licensing Section Head, Division of Nuclear Materials. Responsible for supervising the review of radioactive material license applications.

Training:

Ph.D.—Purdue University (1985)
—Health Physics
MSPH—University of South Carolina (1981)
—Industrial Hygiene and Environmental Quality Assessment
B.S.—National Taiwan University (1978)
—Pharmacy
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"External Dosimetry," Health Physics Society, State College, Pennsylvania (1986)
"Introduction to Licensing Practices and Procedures," US NRC, Bethesda, Maryland (1986)
"Medical Uses of Radionuclides for State Regulatory Personnel," US NRC, Oak Ridge Tennessee (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1983–1986: Purdue University, Graduate Teaching Instructor, School of Pharmacy, Nursing and Health Sciences
1980–1982: Purdue University, Graduate Research Instructor, School of Health Sciences
1980–1981: University of South Carolina, Graduate Teaching Assistant, Department of Environmental Health Sciences
1980–1980: University of South Carolina, Graduate Research Assistant, Department of Environmental Health Sciences
1978–1979: The Church of Taipei, Minister, Taipei, Taiwan
1978–1979: Yun-Fu Pharmaceutical Ltd., Pharmacist, Taipei, Taiwan
1977–1977: National Taiwan University, Hospital, Pharmacy Intern, Taipei, Taiwan
1977–1977: Pfizer Pharmaceutical Company, Assistant Pharmacist (Intern), Tan-Shui, Taiwan ROC

Y. David La Touche: Radioactive Materials License Reviewer, Division of Nuclear Materials. Performs reviews of radioactive material license applications and performs inspections of radioactive materials licensees.

Training:

Ph.D.—Oregon State University (1981)
—Radiation Biology
M.S.—Oregon State University (1978)
—Biological Science

B.S.—Concordia University, Montreal, Canada (1976)
—Biology
"Special Topics in Licensing: Contingency Plans," US NRC, San Francisco, CA (1986)
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1986)
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"Introduction to Licensing Practices and Procedures," US NRC, Bethesda, Maryland (1986)

Experience:

1986—Present: Illinois Department of Nuclear Safety
1982–1986: Oregon State University, Corvallis, Oregon Research Associate
1979–1981: Oregon State University, Corvallis, Oregon Graduate Research Associate
1977–1979: Oregon State University, Corvallis, Oregon Graduate, Teaching Assistant

Yu-Ann Stephen Hsu: Radioactive Materials License Reviewer, Division of Nuclear Materials. Performs reviews of radioactive material license applications and performs inspections of radioactive materials licensees.

Training:

M.S.—Old Dominion University (1982)
—Norfolk, Virginia
—Physics
B.S.—Tam Kang college of Arts and Sciences
—Physics
"Introduction to Air Toxics," US EPA, Kansas City, Missouri (1985)
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1984)
"Safety Aspects of Industrial Radiography for State Regulatory Personnel," US NRC, Baton Rouge, Louisiana (1984)
"Cobalt Teletherapy Calibration," US NRC, Houston, Texas (1984)
"Medical use of Radionuclides for State Regulatory Personnel," US NRC, Tennessee (1984)
"Gas and Oil Well-Logging for State Regulatory Personnel," US NRC, (1983)
"Hazardous Waste Management," Old Dominion University, Virginia Beach, Virginia (1982)
"Inspection Procedures," US NRC, Atlanta, Georgia (1986)

Experience:

1986—Present Illinois Department of Nuclear Safety
1985—1986: Iowa Electric Light & Power Company, Cedar Rapids, Iowa, Radiological Engineer
1982—1985: Kansas Department of Health and Environment, Topeka, Kansas, Radiation Control Inspector
1981—1982: Eastern Virginia Medical Authority, Norfolk, Virginia, Assistant Radiation Safety Officer
1980—1981: Eastern Virginia Medical Authority, Norfolk, Virginia, Radiation Safety Research Technician
1979—1980: Old Dominion University Norfolk, Virginia, Research Assistant

Steve Meiners: Radioactive Materials License Reviewer, Division of Nuclear Materials. Performs reviews of radioactive material license applications and performs inspections of radioactive materials licensees.

Training:

M.S.—University of Arkansas for Medical Sciences (1985)
—Radiation Health Physics
B.A.—Harding University (1981)
—Biology
"Medical Uses of Radionuclides for State Regulatory Personnel," US NRC, Oak Ridge, Tennessee (1986)

Experience:

1985—1985: Texas Tech University, Radiation Safety Officer
1984—1984: University of Arkansas, Graduate Assistant
1981—1984: University of Ankansas, Laboratory Technologist
1981—1983: University of Arkansas, Aquatic Ecologist
1980—1981: Harding University, Teaching Assistant

Sheryl O. Soderdahl: Support Services Section Head, Division of Nuclear Materials. Responsible for the Division's data processing system and registration program, assists in license reviews and inspections, assist in review and revision of regulations and standards and serves as the Department's Radiation Safety Officer.

Training:

B.S.—Purdue University, Indiana (1980) Health Physics
"Inspection Procedures," US NRC, Atlanta, Georgia (1985)
"Writing for Results," Sangamon State University, Springfield, Illinois (1985)
"Introduction to Licensing Practices and Procedures," US NRC, Washington, D.C. (1985)
"Environmental Health Practices," University of Massachusetts, Amherst, Massachusetts (1982)

Experience:

1985—Present: Illinois Department of Nuclear Safety
1980—1985: University of Massachusetts, Department of Environmental Health and Safety, Amherst, Massachusetts, Staff Health Physicist
1979—1979: Fermi National Accelerator Laboratory, Proton Department, Batavia, Illinois

Bruce J. Sanza: Inspection and Enforcement Section Head, Division of Nuclear Materials. Manages the inspection and enforcement program.

Trainin:

M.S.—Texas A & M University (1985)
—Nuclear Engineering (Health Physics)
B.S.—University of Virginia (1979)
—Nuclear Engineering
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associated, Springfield, Illinois (1986)
"Inspection Procedure," US NRC, Atlanta, Georgia (1986)
"Gas & Oil Well Logging for Regulatory Personnel," (Accepted for attendance at November, 1986 course, Houston, Texas)

Experience:

1986—Present: Illinois Department of Nuclear Safety
1983—1986: Texas A & M University, Health Physicist, College Station, Texas
1980—1983: Carolina Power & Light Company, Radiation Control Specialist, Hartsville, South Carolina

George E. Merrihew: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:

M.A.—Sangamon State University (1972)
—Biology/Psychology
B.A.—Sangamon State University (1971)
—Biology/Psychology
A.A.—Springfield, College in Illinois (1969)
—General Secience
"Radiological Emergency Response Operation," FEMA, Las Vegas, Nevada (1986)
"Medical Uses of Radionuclides," US NRC, Oak Ridge, Tennessee (1986)
"Gas and Well Logging for Regulatory Personnel," US NRC, Houston, Texas (1985)
"Radioactive Material Training Course: Hazardous Material Regulations of the United States Department of Transportation," Chicago, Illinois (1985)
"Safety Aspects of Industrial Radiography," US NRC, Baton Rouge, Louisiana (1985)
"Introduction to Licensing Practices and Procedures," US NRC, Bethesda, Maryland (1984)
"Inspection Procedures," US NRC, Atlanta, Georgia (1984)
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1984)

"Radiation Protection Technology," Rockwell International, Energy Systems Group (1983)
"Transportation of Nuclear Materials," US NRC Illinois (1983)
"Executive Development Academy," Illinois Department of Personnel, Illinois (1981)
"ANS Cobol Course," (1980); "Basic Systems Analysis: (1980); "General Introduction to Statistical Package for the Social Sciences" (1979): "DP Concepts" (1979); "IMS Environment Course" (1979); "Easytrieve/IMS Class" (1979); "Basics in Easytrieve," State of Illinois Data Processing Training Center (1977)
"Air Pollution Control Orientation," US EPA (1978)
"Community Hygiene," US HEW, Georgia (1978)
University of Illinois, School of Clinical Medicine, (1974)
University of Illinois, School of Basic Medical Sciences (1973)

Experience:

1983–Present: Illinois Department of Nuclear Safety
1974–1983: Illinois Department of Public Health, Division of Engineering
1971–1972: Sangamon State University, Department of Biology, Graduate Assistant
1965–1967: Memorial Medical Center, Clinical Laboratory

Lori Kim Podolak: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:

M.S.—University of Lowell (1986)
—Radiological Sciences
B.S.—Kentucky Wesleyan College (1984)
—Physics

Experience:

1986–Present: Illinois Department of Nuclear Safety
1984–1986: University of Lowell
1985: Brookhaven National Laboratory
1983: Oak Ridge National Laboratory

Andrew S. Gulczynski: Chicago Inspection and Enforcement Section Head, Division of Nuclear Materials. Supervises Chicago office materials license inspectors.

Training:

B.S—Northeastern Illinois University (1981)
—Biology
"Five Week Health Physics and Radiation Protection Course," US NRC, Oak Ridge, Tennessee (1986)
"Internal Dose Assessment," Technical Management Services, Inc., Illinois (1985)
"Transportation of Radioactive Materials," US DOE, Chicago, Illinois (1985)
"Medical Uses of Radionuclides for State Regulatory Personnel," US NRC, Oak Ridge, Tennessee (1984)
"Safety Aspects of Industrial Radiography for State Regulatory Personnel," US NRC, Baton Rouge, Louisiana (1983)
"Inspection Procedures for State Regulatory Personnel," US NRC, Atlanta, Georgia (1983)
"Radiological Emergency Response Operations," FEMA, Las Vegas, Nevada (1983)

Experience:

1985–Present: Illinois Department of Nuclear Safety
1982–1985: Kansas Department of Health and Environment, Bureau of Radiation Control, Topeka, Kansas,
1981–1982: Argonne National Laboratory, Argonne, Illinois
1977–1981: Northeastern Illinois University, Chicago, Illinois

John D. Papendorf: Radiocative Materials License Inspector. Performs reviews of radiactive materials license applications and performs inspections of radioactive materials licensees.

Training:

N.M.T.—Oak Park Hospital (1975)
—Nuclear Medicine Technologist Certification
R.T.—Hines V.A. Hospital (1972)
—X-Ray Technologist Certification
A.S.—Central YMCA College (1972)
"Inspection of Transportation of Radioactive Materials," U.S. NRC, Glen Ellyn, Illinois (1985)
"Nuclear Transportation for State Regulatory Personnel," US NRC, Columbia South Carolina (1984)
"Hazardous Materials Training Course," U.S. DOE, Chicago, Illinois (1983)
"Radiation Safety," Northwestern University, Evanston, Illinois (1982)
"Radiation Therapy Workshop, Medical Linear Accelerators," US Public Health Service, Chicago, Illinois (1981)
"Acceptance Testing of Radiological Imaging Equipment," American Association of Physicists in Medicine, American College of Radiology and Society for Radiological Engineering, Chicago, Illinois (1981)
"Safety Aspects of Industrial Radiography for State Programs," US NRC, Baton Rouge, Louisiana (1981)
"Inspection Procedures," US NRC, Glen Ellyn, Illinois (1980)
"Quality Assurance in Nuclear Medicine Departments," US Food and Drug Administration, Rockville, Maryland (1979)
"Radiological Emergency Response Operations Training Course for State and Local Government Emergency Preparedness Personnel," FEMA, Las Vegas, Nevada (1979)
"Special Procedures on CT Scanners" US Public Health service, Chicago, Illinois (1976)
"Radiological Workshop," US Public Health Service, Chicago, Illinois (1976)

Experience:

1980–Present: Illinois Department of Nuclear Safety
1976–1980: Illinois Department of Public Health, Division of Radiological Health
1973–1976: Oak Park Hospital, Nuclear Medicine Technologist, Oak Park, Illinois
1972–1973: Oak Park Hospital, X-Ray Technologist, Oak Park, Illinois

Robin Gehrhardt Bauer: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:

M.S.—Emory University (1985)
—Radiological Physics
B.S.—University of Miami (1983)
—Biology
"Health Physics and Radiation Protection," US NRC, Oak Ridge, Tennessee (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1985–1985: Georgia Baptist Hospital, Internship, Medical Physics, Atlanta, Georgia
1985–1985: Emory University, X-Ray, Nuclear Medicine, Calibration, Atlanta, Georgia
19893–1984: Loyola University, Research Technician, Maywood, Illinois

Joanne B. Kark: Radioactive Materials License Inspector. Performs reviews of radioactive materials license applications and performs inspections of radioactive materials licensees.

Training:

Graduate work toward M.S.—Colorado State University (1985)
—University of Tennessee (1982)
—Health Physics
B.S.—Villanova University (1975)
—Biology
Certificate—St. Joseph's Hospital and Medical Center School of Nuclear Medicine Technology Paterson, New Jersey (1977)
"Inspection Procedures," US NRC, Atlanta, Georgia (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1981–1984: Oak Ridge National Laboratory, Health and Safety Research Division, Senior Laboratory Technician
1979–1981: Oak Ridge National Laboratory, Biology Division, Biological Technician
1977–1979: Radiology Associates, Albert Einstein Medical Center, No. Division, Nuclear Medicine Technologist.
1976–1977: SpectroChem Laboratories, Inc., Analytical Chemistry Technician

John W. Cooper: Manager, Office of Environmental Safety. Provides technical support to the Division of Nuclear Materials on an as needed basis.

Training:

Ph.D—University of Iowa (1971)—Radiation Biology
M.S.—University of Iowa (1966)—Pharmacy
B.S.—Drake University (1960)—Pharmacy
"Industrial Ventilation Systems," OSHA Training Institute, Illinois (1983)
"Respirator Safety for CSHO's," OSHA Training Institute, Illinois (1982)

Experience:

1981–Present: Illinois Department of Nuclear Safety
1975–1981: U.S. Nuclear Regulatory Commission, Region III, Inspector and license reviewer
1971–1975: Allegheny General Medical Center, Radiation Biology Laboratory
1964–1971: University of Iowa, Radiation research and teaching

Apparao Devata: Chief, Division of Medical Physics. Provides technical support to the Division of Nuclear Materials on an as needed basis.

Training:

Ph.D.—University of New Orleans (1975)—Physics
M.S.—University of New Orleans (1972)—Physics
MSc.—Andhra University (1968)—Applied Physics
BSc.—Andhra Loyola College (1965)—Mathematics

Experience:

1985–Present: Illinois Department of Nuclear Safety
1985: Medical Physics Consultant
1983–1985: St. James Hospital Medical Center, Chicago Heights, Illinois, Medical physicist
1975–1983: St. Joseph's Hospital, Elgin, Illinois, Medical physicist
1975: Mt. Sinai Hospital, Chicago, Illinois, Medical physicist
VA Hines Hospital, Hines, Illinois, Medical physicist
1969–1975: University of New Orleans Research and teaching

Reference: Illinois Program Statement, Section III, "Implementation of the Agreement State Program for Materials Licenses," Section IV.A.3, "Staff Requirements" and Appendix 5, "Current Agreement State Staff Positions: Byproduct Material, Source Material and Special Nuclear Materials in Quantities Not Sufficient to Form a Critical Mass."

b. Regulatory Oversight of Uranium Conversion Plant

i. *Personnel*

There are two plants in the United States which convert natural uranium oxide (yellowcake) to uranium hexafluoride. These activities are conducted pursuant to source materials licenses issued by the NRC. Under the proposed Agreement, the source material license for the Allied Chemical uranium conversion facility located in Metropolis will be transferred to Illinois.* The Office of Radiation Safety, Division of Nuclear Materials will be responsible for regulatory oversight with technical support from the Offices of Environmental Safety and Nuclear Facility Safety. Overall IDNS will commit 0.6 full-time equivalent professionals effort to this program. Key staff assigned to this program together with summaries of their duties and training and experience are:

(a) Staff previously identified in the materials program (Section 20.a)

Jou-Guang (Joe) Hwang, Y. David La Touche, Bruce J. Sanza, John W. Cooper.

(b) Other IDNS staff:

Lih-Ching Chu: Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety. Supervises analytical support for all Department programs. Provides technical support in radiochemistry and radioanalysis.

Training:

Ph.D—Washington University (1981)—Chemistry
M.A.—Washington University (1981)—Chemistry
M.S.—East Texas State University (1976)—Chemistry
B.S.—Tamkang College of Arts and Sciences (1971)—Chemistry
"Vax Applications Manager," Canberra Industries, Inc., CT, 1984
"Introduction to S–90–VMS Apogee System Operations," Canberra Industries, Inc., CT, 1984

Experience:

1984–Present: Illinois Department of Nuclear Safety
1981–1984: Illinois Department of Energy and Natural Resources
1976–1981: Washington University, St. Louis, Missouri
1974–1976: East Texas State University, Commerce, Texas
1973–1974: Young-Ho Middle School, Young-Ho, Taiwan, ROC
1971–1973: Military Service, Taiwan, ROC

David A. Filler: Assistance Chief, Division of Radiochemistry Laboratories, Office of Environmental Safety. Provides radiochemistry support.

Training:

Ph.D.—University of Michigan, (1976)—Biochemistry
M.S.—University of Michigan, (1973)—Biochemistry
B.S.—Purdue University (1969)—Chemistry
"Vax Applications Manager," Canberra Industries, Inc., Connecticut (1984)
"Introduction to S–90–VMS Apogee System Operations," Canberra Industries, Inc., Connecticut (1984)
"Auditor Training," Gilbert/Commonwealth (1984)
"Radiological Monitor," Indiana Department of Civil Defense and Emergency Management (1983)
"Radiochemistry for State Regulatory Personnel," NRC (1983)
"Radiological Monitoring, Sampling and Analysis of Nuclear Facilities," US DOE (1983)
"Radiological Emergency Response Training for State Government Emergency Preparedness Personnel," FEMA/US DOE (1982)

Experience:

1984–Present: Illinois Department of Nuclear Safety
1981–1984: Indiana State Board of Health, Radiochemistry Lab, Indianapolis, Indiana
1977–1981: Indiana University Medical Center, Indianapolis, Indiana
1976–1977: St. Jude Children's Research Hospital, Memphis, Tennessee

James F. Scheweitzer: Health Physicist, Office of Environmental Safety. Serves as a specialist in environmental monitoring and will provide technical support and guidance in this area.

Training:

Ph.D.—Purdue University (1985)—Environmental Toxicology
M.S.—Purdue University (1981)—Health Physics
B.S.—Randolph-Macon College (1976)—Biology
Environmental Laws and Compliance Course
Short Course: Uranium and Thorium: A Perspective on the Hazard (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety

1985–1986: Purdue University, Office of Radiological and Chemical Control
1980–1980: Purdue University, Office of Radiological and Chemical Control

Michael H. Momeni: Chief, Low-Level Waste Siting Section, Office of Environmental Safety. Provides radiological and environmental support for the Office of Environmental Safety and will provide technical support for Allied Chemical regulatory actions.

Training:

Ph.D—University of Iowa—Biophysics/Radiation Biology
M.S.—University of Iowa—Nuclear Physics
B.A.—Luther College—Physics-Mathematics

Experience:

1986–Present: Illinois Department of Nuclear Safety
1985–1986: Scientist, Oak Ridge Associated Universities, Oak Ridge, Tennessee
1983–1985: Professor-Director of Health Physics Program, San Diego State University, San Diego, California
1975–1983: Senior Scientist, Argonne National Laboratory, Argonne, Illinois
1970–1975: Biophysicist-Lecturer, The University of California, Davis, California
1962–1963: Science Teacher, Urbana Consolidated Schools, Iowa

Gary Wright: Manager, Office of Nuclear Facility Safety. Provides technical assistance concerning engineering principles and emergency planning and response.

Tranining:

—Sangamon State University (1974)
—Degree approx. half complete in Public Administration
M.S.—University of Illinois (1965)—Nuclear Engineering
B.S.—Millikin University (1964)—Physics/Mathematics
"Management Education Workshop," Ill. Dept. of Personnel, Champaign (1978)
"International Symposium on Migration of Tritium in the Environment," International Atomic Energy Agency, California (1978)
"Radiological Emergency Response Operations," US NRC, Nevada (1977)
"Workshop on Collective Bargaining for Public Employees," Ill. Dept. of Personnel (1976)
"Administrative and Organizational Behavior," Ill. Dept. of Public Health (1975)
"Professional Engineering Review," Univ. of Ill. (1974)
"Response of Structures to External Forces, i.e., Earthquakes, Tornados, etc.," Penn. State Univ. (1968)

Experience:

1980–Present: Illinois Department of Nuclear Safety
1973–1980: Illinois Department of Public Health
1967–1973: Sangamo-Weston Electronics Company, Springfield, Illinois
1965–1967: Westinghouse Electric Company, Forrest Hills, Pennsylvania

Reference: Illinois Program Statement, Section III.D." Allied Chemical Uranium Conversion Facility," Appendix 5, and Appendix 9, "Current Agreement State Staff Positions: Low-Level Radioactive Waste Management Program, Office of Environmental Safety."

c. Licensing and Regulation of Permanent Disposal of Low-Level Radioactive Waste

i. Personnel

The Office of Environmental Safety has responsibility for the low-level waste (LLW) management regulatory program which includes the Sheffield site and the regional waste disposal facility. The assessment of the regulatory framework is included under Criterion 9, "Radioactive Waste Disposal." The LLW and transportation management program is staffed by 13 technical staff members. The Manager of the Office of Environmental Safety will provide overall supevision and management and the Chief of the Office's Division of Nuclear Chemistry will provide laboratory support. Technical support will also be available from the Division of Nuclear Materials. These personnel and summaries of their duties are:

(a) Staff previously identified in the materials or uranium conversion plant regulatory oversight programs (Section 20 a and b):

Michael H. Momeni, Lih-Ching Chu, John W. Cooper, James F. Schweitzer.

(b) Other IDNS Staff:

Robert A. Lommler: Chief, Division of Waste and Transportation. Has responsibilities for implementing the Illinois LLW management act, supervises staff in the LLW program and manages the spent nuclear fuel and LLW shipment inspection program.

Training:

B.S.—Kent State University (1971)—Chemistry
"10 CFR 61," US NRC, Springfield, Illinois (1986)
"Incinerator Basics," Univ. of California, Charlotte, N.C. (1986)
"Radioactive Material Transportation Workshop," US DOE, Chicago, Illinois (1985)
"10 CFR 61 Compliance," TMS, Inc., Washington, D.C. (1984)
"Radiological Protection Officer Course," U.S. Army (1978)
"Chemical Officer Advanced Course," U.S. Army (1978–1979)
"Transportation of Hazardous Materials by Air," US DOT (1972)
"Chemical Officer Basic Course," U.S. Army (1971)

Experience:

1984–Present: Illinois Department of Nuclear Safety
1979–1983: U.S. Army, Radiation Safety Officer, Ft. Riley, Kansas
1975–1978: U.S. Army, Mannehim, West Germany
1971–1975: U.S. Army, Edgewood, Maryland

Michael Klebe: Nuclear Safety Engineer. Serves as technical resource on LLW management environmental problems, decomissioning and disposal facility siting.

Training:

M.S.—Montana College of Mineral Science and Technology (1982)—Mining Engineering
B.S.—Montana College of Mineral Science and Technology (1980)—Mining Engineering

Experience:

1986–Present: Illinois Department of Nuclear Safety
1982–1986: Shell Mining Company, Houston, Texas and Elkhart, Illinois, Mining Engineer

David Flynn: Geologist. Evaluates geological and hydrologic factors relating to LLW management.

Training:

B.S.—Southern Illinois University (1979)—Geology
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Springfield, Illinois (1986)
"Corrective Actions for Containing and Controlling Ground Water Contamination," National Water Well Association, Columbus, Ohio (1986)
"A Standardized System for Evaluation of Groundwater Pollution Potential Using Hydrogeologic Setting," National Water Well Association, Denver, Colorado (1986)
"Groundwater Pollution and Hydrology," Princeton & Associates, Miami, Florida (1986)
"Engineering and Design of Waste Disposal Systems," Civil Engineering Department, Colorado State University, Fort Collins, Colorado (1985)
"Groundwater Monitoring Workshop," Illinois Department of Energy and Natural Resources, Champaign, Illinois (1984)

"Radiological Emergency Response Training for State and Local Government Emergency Preparedness Personnel," FEMA, Nevada Test Site (1983)

Experience:

1983–Present: Illinois Department of Nuclear Safety
1981–1983: Mine Geologist, Atlas Minerals Corporation, Moab, Utah
1980–1981: Associate Mine Geologist, Rancher's Exploration & Development Corporation, Albuquerque, New Mexico
1979–1980: Junior Geologist, Rancher's Exploration & Development Corporation, Albuquerque, New Mexico

Shannon M. Flannigan: Geologist. Reviews, interprets and evaluates geologic hydrologic, physical and environmental data related to environmental impact, design, location, construction and decommissioning of facilities.

Training:

B.S.–Drake University (1978) Geology
A.A.–Springfield College in Illinois (1976)–Business
"Radiological Emergency Response," FEMA, Nevada (1986)
"Groundwater Contaminant Transport Modeling," Princeton University, Princeton, New Jersey (1986)
"A standardized System for Evaluating Groundwater Pollution Using Hydrogeologic Setting," Denver, Colorado (1986)
"Groundwater Pollution & Hydrology," Princeton Associates, Princeton, New Jersey (1986)
"Borehole Geophysics Techniques for Solving Groundwater Problems," National Water Well Association, Denver, Colorado (1986)
"Soil Mechanics and Foundations," Lincoln Land Community College, Springfield, Illinois (1981)
"Environmental Risk Assessment," Sagamon State University, Springfield, Illinois (1985)
"Recognition, Evaluation, and Control of Ionizing Radiation," OSHA Training Institute, Illinois (1985)

Experience:

1985–Present: Illinois Department of Nuclear Safety
1984–1985: Hanson Engineers, Inc. Springfield, Illinois
1981–1984: Veesay Geoservice, Inc. Denver, Colorado
1978–1981: Hanson Engineers, Inc. Springfield, Illinois.

George T. FitzGerald: Nuclear Safety Engineer I. Principally responsible for geology.

Training:

B.A.–Humboldt State University, California (1968)–Geology
Post-Graduate Work: Education, Humboldt State University, Economic Evaluation, Colorado School of Mines, Golden, Colorado

Experience:

1986–Present: Illinois Department of Nuclear Safety
1984–1986: Boliden Minerals, Inc., Silver City, New Mexico
1980–1984: Minatome Corporation, Denver, Colorado
1975–1980: SOHIO, Seboyeta, New Mexico
1968–1975: Kerr McGee Corporation Grants, New Mexico

Dana M. Willaford: Nuclear Safety Supervisor. Responsible for overall operation of waste generator registration and inspection program.

Training:

M.P.A.–Sangamon State University (1983)
B.A.–University of Illinois (1981)–Political Science, Math/Physics Minor
"Radioactive Materials Transportation Course," US DOE, Kansas City, Missouri (1986)
"Uranium and Thorium: A Perspective on the Hazard," Radiation Safety Associates, Inc., Springfield, Illinois (1986)
"Recognition, Evaluation, and Control of Ionizing Radiation," OSHA, Des Plaines, Illinois (1985)
"Environmental Laws and Regulations Compliance Course," government institutes, Washington, D.C. (1985)
"Radiological Emergency Response Operations Course," FEMA, Nevada (1983)

Experience:

1983–Present: Illinois Department of Nuclear Safety
1981–1983: Illinois Department of Nuclear Safety/Sangamon State University (Graduate Public Service Intern)
1977–1981: University of Illinois (Student Worker)

Tim Runyon: Nuclear Safety Inspector. Assists the Chief, Waste & Transportation Management.

Training:

A.S.–Illinois Central College–Radiologic Technology
"Hazardous Materials Transportation Course," ISP, Illinois State Policy Academy, Springfield, Illinois (1985)
"Review of USDOT Regulations," US NRC, Hanford, Washington (1985)
"Evaluation and Control of Ionizing Radiation," OSHA, Argonne National Laboratory (1981)
"Emergency Response for Radiological Accidents," REECO, Las Vegas, Nevada (1981)

Experience:

1985–Present: Illinois Department of Nuclear Safety, Office of Environmental Safety
1979–1985: Illinois Department of Nuclear Safety, Office of Radiation Safety

Stephen B. Shafer: Nuclear Safety Inspector II. Performs inspections and health physics Surveys.

Training:

Graduate Classes (non-degree) University of Illinois (1984)
B.S.–Western Illinois University (1983)–Geophysics
Hazardous Materials Transportation Enforcement Course, Illinois State Police, Springfield, Illinois (1986)
Radiological Emergency Response Operations Course, FEMA, Nevada (1986)
Short Course: Uranium and Thorium: A Perspective on the Hazard (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1984–1984: Illinois Department of Nuclear Safety, Summer Intern

Eric Schwing: Attorney. Provides legal counsel to the Director and technical staff in low-level radioactive waste management.

Training:

Ph.D. Candidate (presently enrolled), Michigan State University, Resource Development/Environmental Toxicology
Doctor of Laws (1982), Thomas M. Cooley Law School
B.A.—Michigan State University (1976) —Chemistry

Experience:

1986–Present: Illinois Department of Nuclear Safety
1978–1986: Michigan Department of Public Health
1973–1978: Michigan State University
1971–1972: William Beaumont Geneal Hospital (U.S. Army)

Gregory P. Crouch: Chief, Division of Radioecology. Directs the Office's environmental surveillance program.

Training:

M.P.H.—University of Minnesota (1986) —Environmental Health
M.S.—Purdue University (1977) —Bionucleonics/Health Physics
B.S.—Purdue University (1975) —Biology
"Seminar on the Transportation of Nuclear Materials," US NRC, Springfield, Illinois (1983)
"Radiological Emergency Response Course," US DOE/FEMA, Nevada Test Site (1983)

"Inspection Procedures Course," US NRC, Atlanta, Georgia (1982)

Experience:

1986–Present: Illinois Department of Nuclear Safety
1981–1984: Illinois Department of Nuclear Safety
1977–1978: Indiana University Medical Center, Assistant Radiation Safety Officer
1976–1977: Purdue University, Radiological Services, Graduate Assistant

Gregory J. Shott: Nuclear Safety Supervisor. Supervises the Department's—Mobile Radiochemistry Laboratory.

Training:

M.S.—University of Michigan (1985), Fisheries
B.S.—University of New Hampshire (1981), Biology

Experience:

1986–Present: Illinois Department of Nuclear Safety
1985–1986: Environmental & Chemical Sciences, Inc.; Environmental Scientist
1984: Lawrence Livermore National Laboratory; Research Associate, Environmental Intern Program
1981–1984: University of Washington, Laboratory of Radiation Ecology, Research Assistant

David D. Ed: Assistant Manager, Office of Environmental Safety.

Training:

B.S.—University of Illinois, Urbana (1971)
—Chemistry
"Radon Training for State Personnel," US EPA (1986)
"Comprehensive Health Physics," Rockwell International (1985)
"Biological Effects of Ionizing Radiation," Harvard University, School of Public Health (1982)
"Dose Projection, Accident Assessment and Protective Action Decision Making for Radiological Emergency Response," US NRC, FEMA (1980)
"Environmental Radiation Surveillance," Georgia Institute of Technology (1977)
"Radiological Emergency Response Operations Training," US NRC, ERDA (1977)
"Environmental Source Term Modeling," University of Chicago, Argonne National Laboratory (1971)

Experience:

1980–Present: Illinois Department of Nuclear Safety
1973–1980: Illinois Department of Public Health
1972–1973: Illinois Environmental Protection Agency

Abdul Khalique: Nuclear Safety Scientist I. Plans, implements and participates in radioanalytical programs.

Training:

Ph.D.—University of Birmingham, England (1976), Analytical Chemistry
M.S.—University of Karachi, Pakistan (1967), Chemistry
B.S.—University of Karachi, Pakistan (1964)
Quality Control Course, University of Business Administration, University of Karachi, Pakistan 1964)

Experience:

1986–Present Illinois Department of Nuclear Safety
1981–1986: Department of Pharmacology, Southern Illinois University School of Medicine
1975–1980: Glaxo Laboratories (Pakistan), Ltd.
1968–1970: Opal Laboratories, Ltd. (Pakistan)

Melanie A. Hamel: Health Physicist. Functions as a health physics specialist in the environmental monitoring division.

Training:

B.S.—University of Lowell, MA (1977), Health Physics
University of Lowell, MA (1977), Environmental Monitoring and Surveillance, Health Physics Certification Review, Medical Health Physics
"Environmental Law and the Citizen," Sangamon State University, Springfield, Illinois
"Post-Accident Radiation Assessment," Northwestern University, Illinois
"Radiation Protection Instrumentation," Harvard University, Boston, MA
"Radon Training Session for State Personnel," US EPA

Experience:

1982–Present: Illinois Department of Nuclear Safety
1977–1981: Yankee Atomic Electric Company
1975: University of Lowell, Research Reactor Facility, Health Physics Technician

Michael V. Madonia: Nuclear Safety Associate. Performs technical duties concerning nuclear facility monitoring and environmental radiation control.

Training:

B.S.—University of Illinois
—Nuclear Engineering, Radiation Protection and Shielding
"Air Sampling for Radioactive Materials," Oak Ridge Associated Universities; Oak Ridge, Tennessee (1986)
"Personal Computer Applications in Health Physics," TMS, Inc.; Boston, MA (1986)
Nuclear-General Employee Training (NGET), Commonwealth Edison, Chicago, Illinois (1985)
"Radiation Detection and Measurement—Advanced Course," Eberline Analytical, Albuquerque, New Mexico (1985)
"Fundamentals of Ground Water Contamination," Geraghty & Miller, Chicago, Illinois (1985)

Experience:

1985–Present: Illinois Department of Nuclear Safety
1983–1984 (Summers): Illinois Department of Nuclear Safety

Richard Walker: Nuclear Policy Analyst. Performs review and analysis of Federal and State regulations.

Training:

Ph.D—Purdue University (1976)
—Sociology (Research Methods and Statistics)
M.S.—Purdue University (1974)
—Sociology
B.S.—Marietta College (1972)
—Sociology
Environmental Radiation Surveillance, Harvard University, Massachusetts (1985)
"Fundamentals of Radiation Safety," Radiation Safety Associates (1985)

Experience:

1985–Present: Illinois Department of Nuclear Safety
1978–1984: Chairman, Department of Sociology, Blackburn College, Carlinville, Illinois
1976–1978: Department of Sociology Muhlenberg College, Allentown, Pennsylvania

Teresa A. Adams: Nuclear Policy Analyst. Performs staff functions coordinating and assisting with the direction of office programs.

Training:

B.A.—Wellesley College (1981)
—German
Massachusetts Institute of Technology, Department of Urban Studies and Planning (1982–1984)
University of Hanover, West Germany: Department of Planning and Architecture (1981–1982)
Additional coursework in decision analysis, fundamentals of radiation protection, hazardous waste minimization

Experience:

1985–Present: Illinois Department of Nuclear Safety
1984: Parliamentary Research Service; Bonn, West Germany
1982–1984: Worked on a variety of projects dealing with policy

development and dispute resolution in environmental issues

Paul E. Seidler: Nuclear Policy Analyst. Responsible for implementing the Illinois public participation plan, also performs as liaison with local government groups.

Experience:

M.A.—University of Chicago (1986) —Public Policy

B.A.—University of Illinois (1983) —Political Science, Communications Studies

Urban & Regional Information Systems Association, 1986 Annual Conference (1986)

Experience:

1986–Present: Illinois Department of Nuclear Safety

1985–1986: University of Chicago, Office of the Comptroller

1985–1985: Illinois Bureau of the Budget

1984–1985: Compass Health Plans

1984–1984: U.S. Senator Paul Simon

1982–1982: Creative Research Associates

Reference: Illinois Program Statement, (Section II.C.1.a), "Low-Level Waste Management," (Section II.C.1.b) "Sheffield Low-Level Waste Disposal Facility," Section IV.B, "Low-Level Radioactive Waste Management Program," and Appendices 5 and 9.

21. *Conditions Applicable to Special Nuclear Material, Source Material, and Tritium.* Nothing in the State's regulatory program shall interfere with the duties imposed on the holder of the materials by the NRC, for example, the duty to report to the NRC, on NRC prescribed forms (1) transfers of special nuclear material, source material, and tritium; and (2) periodic inventory data.

The State's regulations do not prohibit or interfere with the duties imposed by the NRC on holders of special nuclear material owned by the U.S. Department of Energy or licensed by NRC, such as the responsibility of licensees to supply to the NRC reports of transfer and inventory.

Reference: 32 ILL. Adm. Code 310.10.

22. *Special Nuclear Material Defined.* The definition of special nuclear material in quantities not sufficient to form a critical mass, as contained in the Illinois regulations, is uniform with the definition in 10 CFR Part 150.

Reference: 32 ILL. Adm. Code 310.20, Definition of Special Nuclear Material in Quantities Not Sufficient to Form a Critical Mass.

Administration

23. *Fair and Impartial Administration.* The Illinois statute and regulations provide for administrative and judicial review of actions taken by the Department of Nuclear Safety.

Reference: 32 Ill. Adm. Code Parts 200, 310.90, 310.110, 330.500, Part 400.

24. *State Agency Designation.* The Illinois Department of Nuclear Safety has been designated as the State's radiation control agency.

References: Enabling statute for Illinois Department of Nuclear Safety, Ill. Rev. Stat. 1985, ch. 127, par. 63b17.

25. *Existing NRC Licenses and Pending Applications.*

The Department has made provision to continue NRC licenses in effect temporarily after the transfer of jurisdiction. Such licenses will expire on the date of expiration specified in the NRC license.

With respect to the radioactive materials covered by the NRC license issued to Kerr-McGee Chemical Corporation for the West Chicago Rare Earth's Facility (Docket No. 40–2061–SC) the NRC staff has determined that the radioactive materials at the facility are most appropriately treated as thorium mill tailings, i.e., byproduct materials are defined in Section 11e.(2) of the Atomic Energy Act of 1954, as amended, whereas the thorium-bearing materials recovered from off-site residential properties and sewer treatment plant in West Chicago and stored at the Kerr-McGee facility are source material. The former material [11e(2) by product material] will not be subject to the Agreement and NRC will retain regulatory jurisdiction. The latter material will be regulated by IDNS when the Agreement becomes effective.

Radiologically contaminated materials in Kress Creek and in Reed-Keppler Part, West Chicago have also been determined by NRC staff to be source material. The former is the subject of an Atomic Safety and Licensing Board (ASLB) Proceeding [Docket 40–2061–SC (ASLBP No 84–502–01–SC)]. In the Kress Creek proceeding, in which Kerr-McGee and the People of the State of Illinois are parties, the ASLB found that the presence of this material in Kress Creek and the West Branch of the DuPage River probably resulted from the conduct of an NRC (and AEC) licensed activity at the West Chicago Rare Earths Facility. The ASLB, however, declined to require clean-up of the Creek and River based upon its analysis of the hazard posed by the radiologically contaminated material. The NRC staff has appealed that decision to the Atomic Safety and Licensing Appeal Board, but a decision on appeal has not yet been issued. Jurisdiction over source material in Kress Creek and the West Branch of the DuPage River will be relinquished to Illinois when the Agreement becomes effective. At that time, the NRC staff will request termination of the ASLB proceeding. Jurisdiction over the source material in Reed-Keppler Park will also be relinquished to Illinois when the Agreement becomes effective.

With respect to the Sheffield low-level radioactive waste disposal site, jurisdiction will be relinquished by the NRC to Illinois when the Agreement becomes effective. At that time, NRC staff will request termination of the ASLB proceeding [Docket 27–39–SC (ASLB No. 78–374–01–OT)].

Reference: 32 ILL. ADM. CODE 330.360.

26. *Relations With Federal Government and Other States.* There should be an interchange of Federal and State information and assistance in connection with the issuance of regulations and licenses or authorizations, inspection of licensees, reporting of incidents and violations, and training and education problems.

The proposed agreement declares that the State will use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of like materials.

Reference: Proposed Agreement between the State of Illinois and the Nuclear Regulatory Commission, Article VI.

27. *Coverage, Amendments, Reciprocity.*

The proposed Illinois agreement provides for the assumption of regulatory authority over the following categories of materials within the State:

(a) Byproduct material, as defined by Section 11e(1) of the Atomic Energy Act, as amended.

(b) Source materials.

(c) Special nuclear materials in quantities not sufficient to form a critical mass.

(d) The land disposal of source, by-product and special nuclear material received from other persons.

Reference: Proposed Agreement, Article I.

Provision has been made by Illinois for the reciprocal recognition of licenses to permit activities within Illinois of persons licensed by other jurisdictions. This reciprocity is like that granted under 10 CFR Part 150.

Reference: 32 ILL. ADM. CODE 330.900.

28. *NRC and Department of Energy Contractors.*

The State's regulations provide that certain NRC and DOE contractors or subcontractors are exempt from the State's requirements for licensing and registration of sources of radiation which such persons receive, possess, use, transfer, or acquire.

Reference: 32 ILL. ADM. CODE 310.30.

III. Staff conclusion

Section 274d of the Atomic Energy Act of 1954, as amended, states;

The Commission shall enter into an agreement under subsection b of this section with any State if:

(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

(2) The Commission finds that the State program is in accordance with the requirements of subsection o, and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed amendment.

The staff has concluded that the State of Illinois meets the requirements of Section 274 of the Act. The State's statutes, regulations, personnel, licensing, inspection and administrative procedures are compatible with those of the Commission and adequate to protect the public health and safety with respect to the materials covered by the proposed agreement. Since the State is not seeking authority over uranium milling activities, subsection o, is not applicable to the proposed Illinois agreement.

Dated at Bethesda, Maryland, this 24th day of December 1986.

For the U.S. Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

Appendix A—Proposed Agreement Between the United States Nuclear Regulatory Commission and the State of Illinois for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant To Section 274 of the Atomic Energy Act of 1954, as Amended

WHEREAS, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7 and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials and special nuclear materials in quantities not sufficient to form a critical mass; and,

WHEREAS, the Governor of the State of Illinois is authorized under Illinois Revised Statutes, 1985, ch. 111 ½, par. 216b and ch. 111 ½, par. 241–19 to enter into this Agreement with the Commission; and,

WHEREAS, the Governor of the State of Illinois certified on _____ that the State of Illinois (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, the Commission found on _____ that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and,

WHEREAS, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, this Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, IT IS HEREBY AGREED between the Commission and the Governor of the State, acting in behalf of the State as follows:

Article I

Subject to the exceptions provided in Articles II, IV and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7 and 8, and Section 161 of the Act with respect to the following:

A. Byproduct material as defined in section 11e.(1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass; and,

D. The land disposal of source, byproduct and special nuclear material received from other persons.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with rspect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission; and,

E. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area specified in Article II, paragraph E, whereby the State can exert regulatory control over the materials stated therein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act.

Article IX

This Agreement shall become effective on _____, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at _____, in triplicate, this _____ day of _____.

For the United States Nuclear Regulatory Commission.

Chairman

For the State of Illinois.

Governor

[FR Doc. 86-29382 Filed 12-30-86; 8:45 am]
BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; MDS Acquisition Corporation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has granted a request from MDS Acquisition Corporation and Culbro Corporation for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request for exemption from the requirement was published on November 18, 1986 (51 FR 41713). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The non-confidential portions of the request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, Suite 7100, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202-778-8850 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, ("ERISA" or "the Act"), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1) (A)-(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plans years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. The granting of an exemption or variance

from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§§ 2643.12–2643.14) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of section 552(b)(4) of the Freedom of Information Act.

Under § 2643.3 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exempiton in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Decision

On November 18, 1986 (51 FR 41713), the PBGC published a joint request from MDS Acquisition Corporation ("the Buyer") and the Culbro Corporation ("the Seller") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) as it applies to the purchase of the assets of the Metropolitan Distribution Services, Inc. ("the Purchased Facility") from the Culbro Corporation. The sale of assets became effective on September 15, 1986. No comments were received in response to the notice.

Employees at the Purchased Facility are covered by the following multemployer pension plans: Trucking Employees of North Jersey (Local 60); Local 153 Pension Fund; IUE AFL-CIO Pension Fund (Local 332); Teamsters Pension Fund of Philadelphia and Vicinity (Local 331); and Local 805 Pension Fund. The Buyer has assumed the obligation to contribute to the multiemployer pension plans on behalf of the employees at the Purchased Facility and the Seller has agreed to be secondarily liable for any withdrawal liability should the Buyer withdraw from any of these Funds within five years of the sale. The Seller's potential withdrawal liability to these Funds is estimated to be $285,000. The amount of the bond/escrow that would be required of the Buyer under section 4204(a)(1)(B) is approximately $500,000 based on the 1985 contributions or the 3-year average of the contributions to each plan.

According to the pro forma financial statement and balance sheet submitted by the Buyer, the Buyer's net tangible assets immediately following the purchase were $1,000,000, exceeding the estimated withdrawal liability by more than $700,000. Further, the Buyer submitted projections of net income over the next five years that indicate after tax income growing from $491,000 to $1,465,000.

Based on the facts of this case and the representations and statements made in connection within the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore, the PBGC hereby grants the request for an exemption from the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisifies such other requirements is a determination to be made by the plan sponsor.

Issued at Washington, DC, on this 22nd day of December, 1986.

Kathleen P. Utgoff,

Executive Director.

[FR Doc. 86–29307 Filed 12–30–86; 8:45 am]

BILLING CODE 7708–01–M

Multiemployer Pension Plans; Withdrawal Liability in Plans Without Unfunded Vested Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interpretation.

SUMMARY: On September 6, 1985, the Pension Benefit Guaranty Corporation ("PBGC") published (at 50 FR 36504) a notice soliciting public comment on its reconsideration of the position taken in PGBC Opinion Letter 83–19 that an employer withdrawing from a multiemployer pension plan may incur withdrawal liability to the plan under section 4201 of the Employee Retirement Income Security Act of 1974, as amended, even though the plan has no unfunded vested benefits at the end of the preceding plan year. This notice advises employers, multiemployer plan sponsors, and other interesterd persons that after reconsidering its provious opinion, the PBGC has concluded that a plan does not have a right to assess withdrawal liability under such circumstances.

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; 202–778–8850 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Under section 4201 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), an employer that withdraws from a multiemployer pension plan covered under Title IV of ERISA may be required to pay the plan withdrawal liability, which is the employer's allocable share of the plan's unfunded vested benefits, as determined under section 4211 of ERISA, modified by various other provisions in sections 4201–4225. Section 4211 establishes four methods of computing the amount of unfunded vested benefits allocable to a withdrawing employer: the presumptive method, described in section 4211(b); the modified presumptive method, described in section 4211(c)(2); the rolling-5 method, described in section 4211(c)(3); and the direct attribution methods, described in section 4211(c)(4).

Under each of these methods, except for the rolling-5 method, a withdrawing employer's withdrawal liability is computed by adding up its share of various "pools" of charges and credits, representing unfunded vested benefits and changes in unfunded vested benefits (and, in the case of the direct attribution methods, plan assets). Because a particular employer will normally be charged or credited with differing proportions of each pool, the sum of its charges and credits may be greater than zero, even when the plan as a whole had no unfunded vested benefits as of the end of the plan year preceding the withdrawal.

In Opinion Letter 83–19 (August 11, 1983), the Pension Benefit Guaranty Corporation ("PBGC") took the position that, under the presumptive method described in section 4211(b) of ERISA, a withdrawing employer might incur withdrawal liability even though the

plan had no unfunded vested benefits as of the end of the plan year preceding the date of withdrawal. Although the letter did not discuss other allocation methods, the same reasoning would apply to the modified presumptive and direct attribution methods. After receiving several requests for reconsideration of Opinion Letter 83–19, the PBGC published a notice (50 FR 36504 (September 6, 1985)) soliciting public comments on the proper application of the statutory allocation methods in a plan year when (as of the end of the preceding plan year) a plan has no unfunded vested benefits and in subsequent plan years. In particular, the PBGC requested responses to three questions:

1. Does section 4211 mandate or prohibit assessment of withdrawal liability against an employer that withdraws from a multiemployer plan with no unfunded vested benefits?

2. Does the answer to question 1 depend on the allocation method used?

3. If in a subsequent year a plan's unfunded vested benefits exceed zero, how should withdrawal liability for later withdrawals be calculated?

The PBGC received eighteen comments in response to the notice.

One commenter took the position that section 4211 mandates the assessment of withdrawal liability under all allocation methods without regard to whether a plan has unfunded vested benefits. That commenter pointed out that section 4219(c)(8) of ERISA deals specifically with the extinguishment of withdrawal liability based on a plan's funding status and sets a higher standard than full funding of vested benefits, namely, full funding of all plan obligations. The commenter also argued that to prohibit the assessment of withdrawal liability under the direct attribution method by plans with no unfunded vested benefits would mean that some employers would be subsidizing the benefits of other employers' employees.

Most of the commenters stated either that ERISA prohibits the assessment of withdrawal liability where there are no unfunded vested benefits or that the statute is unclear on this point. Some of those who considered the statute unclear on its face contended that, in view of the purposes of ERISA, plans should not assess withdrawal liability when they have no unfunded vested benefits. Commenters opposing the position taken in Opinion Letter 83–19 pointed out that it is illogical to allocate a share of unfunded vested benefits to an employer, no matter what the statutory formulas provide, if there are no unfunded vested benefits to allocate. They also noted that the *de minimis* reduction from withdrawal liability under ERISA section 4209 disappears when vested benefits become fully funded and concluded that this evidenced a Congressional expectation that plans with no unfunded vested benefits would not assess withdrawal liability. One commenter pointed out that the application of the presumptive method in the manner set forth in Opinion Letter 83–19 can result in the assessment of withdrawal liability even for employers who join a plan after it has become fully funded for vested benefits and have never contributed to the plan when it had unfunded vested benefits.

Only one commenter stated that section 4211 distinguishes between allocation methods with respect to whether withdrawal liability may be assessed when a plan has no unfunded vested benefits. That commenter took the position that the unfunded vested benefits referred to under the direct attribution method are those related to each individual employer, whereas other methods refer to the unfunded vested benefits of the plan as a whole. Thus the commenter concluded that under the direct attribution method—but not the other methods—the allocation of liability to an employer is mandated if unfunded vested benefits are attributable to that employer under the formula prescribed in section 4211, whether or not the plan as a whole has unfunded vested benefits.

New Interpretation

After reviewing the comments submitted in response to the notice and re-examining the statute in the light of those comments, the PBGC is not persuaded that it erred in stating in Option Letter 83–19 that ERISA requires the assessment of withdrawal liability by a plan that has no unfunded vested benefits at the end of the preceding plan year.

The PBGC believes that the references to an allocation of unfunded vested benefits to an employer in sections 4201(b) and 4211 of ERISA support the inference that no allocations are to be made when no unfunded vested benefits exist. Furthermore, "unfunded vested benefits" is defined in ERISA section 4213(c), and that definition refers to the status of a plan as a whole, not to an individual employer's status. Thus no basis appears for the distinction drawn by one of the commenters, and discussed above, between the direct attribution method and other methods.

The arguments advanced in favor of the view set forth in Opinion Letter 83–19 have been reviewed by the PBGC and have been found to be unpersuasive.

The principal basis for that opinion letter was that the result seemed to be compelled by a literal reading of the statutory language. Section 4201(b)(1) of ERISA states:

> The withdrawal liability of an employer to a plan is the amount determined under section 4211 to be the allocable amount of unfunded vested benefits. . . .

Section 4211(a) in turn provides that:

> The amount of the unfunded vested benefits allocable to an employer that withdraws from a plan shall be determined in accordance with subsection (b), (c), or (d) of this section.

For the reasons discussed above, the use of certain of these allocation formulas may produce a positive "amount of unfunded vested benefits allocable to an employer" despite the fact that the plan as a whole has no unfunded vested benefits.

This apparently straighforward reading does not, however, survive closer scrutiny. The use of the term "allocable" at least suggests the prior existence of unfunded vested benefits to be allocated. Further, the discussion of withdrawal liability in the legislative history of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), which added section 4201 *et seq.* to ERISA, strongly reinforces this suggestion. For example, Senator Javits, one of the Senate sponsor of MPPAA, stated:

> Under the bill, an employer who withdraws from a multiemployer plan would be liable to the plan for *a proportionate share of the unamortized amount of the plan's unfunded vested benefits.* In the absence of effective withdrawal liability, an employer could withdraw from a plan leaving unfunded benefit obligations for his employees which must be paid by the remaining employers in the plan. If the plan, or related industry in which it is located, is experiencing or in the foreseeable future will experience financial difficulty, the absence of effective withdrawal liability would encourage a "last man out" mentality, with employers withdrawing from plans to avoid possible plan termination liability.

(126 Cong. Rec. 20,178 (1980) (emphasis supplied).) If a plan has no unfunded vested benefits, each employer's "proportionate share" is necessarily zero, and withdrawals do not entail the evils cited by Senator Javits.

Moreover, the legislative record contains no indication that Congress intended or recognized that section 4211 might be applied to assess withdrawal liability against an employer withdrawing from a fully funded plan. Indeed, as one commenter pointed out, the manner in which the *de minimis* rule (ERISA section 4209) operates implies that Congress did not anticipate that

withdrawal liability could exist when a plan had no unfunded vested benefits.

Therefore, the PBGC finds that while section 4211 is ambiguous as to whether an employer that withdraws from a plan that has no unfunded vested benefits as of the end of the preceding plan year may incure withdrawal liability, reference to the legislative history and other provisions of Title IV clears up this ambiguity and compels the conclusion that no withdrawal liability is to be assessed in such as case.

This conclusion is buttressed when one examines the underlying rationale for imposing withdrawal liability. The fundamental purpose of withdrawal liability is to prevent the burden of unfunded benefits from falling on a shrinking contribution base and possibly accelerating the exodus of employers from the plan. In situations where this purposes is not served, the reason for withdrawal liability disappears.

As previously noted, one commenter argued that ERISA section 4219(c)(8) precludes relief from withdrawal liability when a plan is fully funded for vested benefits but not for "all obligations of the plan." The PBGC finds this argument misdirected because the PBGC takes the view that the "obligations of the plan" referred to in section 4219(c)(8) are in fact the plan's vested benefits. This interpretation is consistent with section 4041A(c)(2) of ERISA, which authorizes a terminated plan to close out if it is fully funded for vested benefits.

The PBGC also disagrees with the contention that barring fully funded plans from assessing withdrawal liability is tantamount to the "subsidization" by continuing employers of benefits attributable to a withdrawn employer's employees. Multiemployer plans, by their nature, do not attempt to equate a particular employer's contributions to the benefits earned by a particular group of workers. In particular, the amount of unfunded vested benefits allocated to an emloyer under section 4211 of ERISA may bear little relationship to its own employees' vested benefits. This it true even under the direct attribution method. Although one element of an employer's liability under that method is the vested benefits attributable to service in its employ, the allocation of plan assets and unattributable benefits destroys any precise link between the calculated liability and the employment and contribution history of the employer.

The fact that an employer has a positive section 4211 balance under a particular funding method does not imply that benefits attributable to its employees have not been fully funded by its own contributions, nor does the absence of a section 4211 balance imply the opposite. To the extent that the statutory allocation methods cause some employers to "subsidize" others, this would occur regardless of whether fully funded plans could assess withdrawal liability and would not be materially reduced by requiring or permitting them to do so.

The PBGC is aware that the U.S. Court of Appeals for the Eighth Circuit, in *Ben Hur Construction Co. v. Goodwin*, 784 F.2d 876 (8th Cir., 1986), took a position inconsistent with that set forth in this notice. For the reasons given above, the PBGC believes that the court's decision was erroneous. The PBGC also notes that the court's rationale would apply only to plans using the direct attribution method.

Accordingly, it is the PBGC's opinion that ERISA does not permit the assessment of withdrawal liability under any statutory allocation method against employers that withdraw from a plan when, as of the end of the preceding plan year, the plan has no unfunded vested benefits.

Finally the PBGC recognizes that the interpretation set forth above creates questions as to how the statutory allocation methods are to be applied when a plan that has been fully funded is no longer so. The PBGC intends to issue a notice of proposed rulemaking dealing with these questions in the near future.

Issued in Washington, DC, this 23rd day of December 1986.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86-29310 Filed 12-30-86; 8:45 am]

BILLING CODE 7708-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold a public meeting on January 8–9, 1987 in Room 800 of the Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC. Each day's meeting will begin at 8:30 am. The Commision was established by section 9305 of Pub. L. 99-272.

ADDRESS: The Commission's office in the Mary E. Switzer Building, 330 C Street SW., Washington, DC 20201 in Suite 7033. Its telephone number is 202/472-1364.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director for Management and External Relations, 202/472-1364.

SUPPLEMENTARY INFORMATION: The meeting will begin with a one-hour executive session on January 8 from 8:30 to 9:30. From 9:30 to 12:15, the Commission will hear testimony from interested parties that have made arrangements to appear (see the announcement published in the **Federal Register** of December 23, 1986). The meeting will break for lunch at 12:15 and resume at 1:45 p.m. Once the hearing is completed, the remainder of the time on January 8 and all of the time on January 9 will be devoted to a discussion of what to include in the March 1 report.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 86-29389 Filed 12-30-86; 8:45 am]

BILLING CODE 6820-SE-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15489; 812-6501]

Arch Fund, Inc.; Application for Exemption

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicants: The Arch Fund, Inc., The Arch Tax-Exempt Trust.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 18(f)(1), 18(g) and 18(i).

Summary of Application: Applicants seek an order to permit the issuance and sale of separate classes of securities representing interests in their existing and future investment portfolios (and the allocation of voting rights thereto and payment of dividends thereon) in the manner described below.

Filing Date: The application was filed on October 16, 1986 and amended on December 18, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by this SEC by 5:30 p.m., on January 12, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to

the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549.A*ERR20*pplicants, No. 6, The Commons, 3512 Silverside Road, Wilmington, Delaware 19810.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland, (301) 253–4300).

FOR FURTHER INFORMATION CONTACT: Denis R. Molleur, Staff Attorney (202) 272–2363 or Brion R. Thompson, Special Counsel (202) 272–3016 (Office of Investment Company Regulation).

Applicant's Representations:

1. Each of the Applicants is registered under the 1940 Act as an open-end, management investment company, and has a currently effective registration statement under the Securities Act of 1933. At present, one of the Applicants offers a single class of shares representing interests in a single investment portfolio; the other Applicant is a "series" investment company offering two classes of shares representing interests in separate investment portfolios. (Applicants existing and future investment portfolios are referred to as "Portfolios," and the existing classes of shares representing interests in Applicants existing Portfolios, together with each initial class of shares that is created by Applicants in connection with any future Portfolios, are referred to as "Existing Shares.")

2. Applicants' shares are sold presently only to certain institutions, including Merchantile Bank, N.A., St. Louis, Missouri ("Mercantile") and its affiliated and correspondent banks (collectively, "Institutions"), acting on behalf of their customers. Mercantile also provies investment advisory or sub-advisory services to the Applicants.

3. All expenses of each Portfolio are currently borne pro rata by the shareholders of the Portfolio. Portfolio expenses consist of advisory, administration, custodial and transfer agency fees, as well as payments to Institutions pursuant to non-12b–1 Shareholder Services Plans (as described below) for support services provided to their customers who are the beneficial owners of Shares in the Portfolios. Neither of the Applicants has adopted a distribution plan pursuant to Rule 12b–1 under the 1940 Act ("12b–1 Plan"), and neither currently pays its distributor for distribution services.

4. As a result of increased competition for the short-term investments of institutional investors and their customers accounts, Applicants seek to tailor their services and expenses to the investment needs of the particular investor. In order to accomplish this, and to expand their marketing alternatives, Applicants are contemplating the creating of new classes of shares ("New Shares"). Like the Existing Shares, the New Shares would be offered only to or through Institutions and could not be purchased by individuals directly from Applicants. Further, except for its class designation and the allocation of certain expenses and voting rights as described below, each class of New Shares would be identical in all respects to one of the classes of Existing Shares. Among other things, the "matched" sets of New Shares and Existing Shares would be subject to the same investment objective, policies and limitations, the same dividend policies and the same purchase and redemption policies. They would differ, however in that certain classes of Shares would be offered in connection with (1) a 12b–1 Plan or (2) a non-12b–1 Shareholder Services Plan adopted by the Applicant pursuant to all the requirements of Rule 12b–1 except those relating to shareholder voting rights and automatic termination of the plan upon its assignment; or (3) no plan at all. (These 12b–1 plans and non-12b–1 Shareholder Services Plans are referred to as "Plans.") The adoption and implementation of a Plan by one Applicant would be made independently of, and would not be conditioned upon, the adoption or implementation of a Plan by the other Applicant. In addition, each Plan would relate only to the shares of a particular Applicant.

5. Under each type of Plan, an Applicant would enter into Servicing Agreements with Institutions concerning the provision of support services to the customers of Institutions who from time to time beneficially own shares which are offered in connection with the Plan ("Customers"). In addition, Servicing Agreements under a 12b–1 Plan would contemplated the provision of distribution assistance by an Institution in connection with the Plan. The provision of support services and distribution assistance under the Plans would augment (and not duplicate) the services that are currently provided to Applicants by Mercantile, and their distributor, administrator, advisors and sub-advisors, and transfer agents.

6. Under each type of Plan, an Applicant would pay participating Institutions for their support services and/or distribution assistance in accordance with the terms of the Plan and the relevant Servicing Agreement (such payments are referred to as "Service Payments"). Service Payments paid to an Institution would not exceed 0.75% (on an annualized basis) under a non-12b-1 Shareholder Servicing Agreement, or 0.50% (on an annualized basis) under a non-12b–1 Shareholder Servicing Agreement, of the average daily net asset value of those Shares beneficially owned by customers of the Institution with respect to which the Institution provides services and assistance under the Servicing Agreement. Because a Servicing Agreement necessarily contemplates the provision of services and assistance by an Institution to its customers, the Applicants would not knowingly enter into a Servicing Agreement with an Institution in those situations where the Institution invests for its own account.

7. Applicants believe that it would be inefficient, and in some instances economically or operationally infeasible, to organize a separate investment Portfolio for each class of New Shares created. Thus, Applicants propose that the New Shares would represent interests in the same Portfolios as the Existing Shares. Under this arrangement, each New and Existing Share in a particular Portfolio, regardless of class, would represent an equal pro rata interest in the Portfolio and would have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions, except that: (1) Each class of New Shares and Existing Shares would have different class designations; (2) each class of shares offered in connection with a Plan would bear the expense of the Service Payments that were made under the Servicing Agreements that have been entered into with respect to that class; (3) each class of shares would bear certain other expenses ("Class Expenses") that are directly attributable to that class as described below; and (4) only the holders of the shares of the class or classes involved would be entitled to vote on matters pertaining to the Plan, and the Servicing Agreements, relating to such class or classes.

8. The net asset value of all outstanding shares representing interests in the same Portfolio would be computed on the same days and at the same times by adding the value of all portfolio securities and other assets

belonging to the Portfolio and dividing the result by the number of that Portfolio's outstanding shares. Further, the gross income of a Portfolio would be allocated on a pro rata basis to each outstanding share in the Portfolio regardless of class, and all expenses incurred by the Portfolio (for example, advisory fees, custodial fees, taxes, interest, director's fees, officers' salaries, insurance premiums, costs of independent pricing service, if any, and costs of annual shareholders' meetings, as well as all other expenses that are not directly attributable to a particular class of shares) would be borne on a pro rata basis by such outstanding shares, except for Service Payments made under a Plan that has been adopted in connection with a class of shares and except for Class Expenses. Such Class Expenses would consist of those expenses that are directly attributable to a particular class of shares which an Applicant's board of directors determines should be borne solely by that class, and could include expenses such as registration, printing and mailing expenses, state registration expenses and transfer agency fees. Whether any particular type of expense is a Class Expense would depend, in the first instance, upon whether it is attributable to a particular class of shares. If an expense that originally qualifies as a Class Expense can no longer be attributed to a class of shares, it would be charged generally to the Portfolio or Applicant involved. Conversely, if a general expense becomes attributable to a particular class of shares, it would qualify as a Class Expense.

9. Because of the Service Payments and other Class Expenses that may be borne by a class of shares, the net income of that class may be somewhat different than the net income of the other "matched" classes of shares in the same Portfolio. Dividends paid to each class of shares in a Portfolio would, however, be declared and paid on the same days and at the same times, and, except as noted with respect to the expense of Service Payments and other Class Expenses, would be determined in the same manner and paid in the same amounts.

10. The proposed arrangement does not involve borrowings and does not affect Applicants' existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares in a Portfolio, since all shares will participate pro rata in all of the Portfolio's income and all of the Portfolio's expenses (with the exception of the proposed Service Payments and other Class Expenses). All of the representations and conditions contained in the application will apply to any future investment Portfolio to which the exemptive relief will apply.

11. Under state law and under recent letters of the Comptroller of the Currency, the ability of a bank to accept a fee from an investment company in connection with the investment of the assest of its fiduciary accounts may be restricted. To the extent such investments are permitted, each Applicant will include in its prospectus relevant disclosure about the Comptroller's letters.

Applicant's Conditions

If the requested order is granted, each Applicant agrees to the following conditions:

1. The only difference between each class of shares representing interests in the same Portfolio will relate solely to priorities with respect to: (a) the payment of dividends and such priority will reflect only the impact of the Service Payments made by Applicants under the Plans relating to particular classes of shares and any other Class Expenses, and (b) voting rights on matters which pertain to Plans (and Servicing Agreements and Service Payments thereunder). In addition, the designation of each class of shares in a Portfolio would be different.

2. The Plans (including both 12b–1 Plans and non-12b-1 Shareholder Services Plans), Servicing Agreements and Service Payments relating to shares will be approved and reviewed by the relevant Applicant's governing board of directors in accordance with the procedures set forth in Rule 12b–1 and, in addition, the 12b–1 Plans (and, to the extent required, the Servicing Agreements and Service Payments thereunder) relating to Shares will be approved by those shareholders who are affected in accordance with that Rule. In addition, each governing board, in approving and reviewing payments to an Institution pursuant to any 12b–1 Plan or non-12b-1 Shareholder Services Plan, will conclude in good faith based on information available to them that such expenditures are competitive with those offered in the industry.

3. Dividends paid by an Applicant with respect to each class of shares in a Portfolio will be calculated in the same manner and will be in the same amount as dividends paid by the Applicant with respect to each other class of shares in the same Portfolio, except that the expenses of any Service Payments made by the Applicant under the Servicing Agreements, as well as any other Class Expenses relating to a class of shares will be borne exclusively by that class.

4. Each Prospectus relating to a class of shares that is offered in connection with a Plan will: (a) Describe the services rendered by Institutions under Servicing Agreements with respect to those shares and the fees payable by the Applicant involved for such services; and (b) state that the beneficial owners of those shares should read the prospectus in light of the terms governing their institutional accounts.

5. Each Servicing Agreement entered into by an Applicant will contain representations by the institution involved that: (a) The Institution will provide to its customers a schedule of any fees charged by it to the customers relating to the investment of their assets in the class of shares subject to the Servicing Agreement; and (b) the compensation paid to the Institution under the Servicing Agreement, together with any other compensation the Institution receives from its customers for services contemplated by the Servicing Agreement, will not be excessive or unreasonable under the laws and instruments governing the Institution's relationships with its customers.

6. Applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization or acquiescence in any particular level of payments that Applicants may make to Institutions pursuant to Plans in reliance on the exemptive order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Dated: December 22, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–29325 Filed 12–30–86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–15493; 812–6534]

Cablevision Investment of Detroit, Inc.; Application for Exemption

Dated: December 22, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Cablevision Investment of Detroit, Inc.

Relevant 1940 Act Section: Exemption requested under section 6(c).

Summary of application: Applicant seeks an order exempting it from all

provisions of the 1940 Act in connection with the proposed offer of its shares pursuant to a cable television franchise agreement. Applicant alleges that it is not the type of company intended to be regulated by the 1940 Act.

Filing Date: The application was filed on November 12, 1986, and amended on December 5, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on January 12, 1987. Request a hearing in writing giving the nature of your interest, the reasons for the request, and the issues contested. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary, SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary, SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, The Book Building, 21st Floor, 1249 Washington Boulevard, Detroit, MI 48226.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Meryl Dewey (202) 272–3038 or Special Counsel H.R. Hallock, Jr. (202) 272–3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Applicant, a newly formed Michigan corporation, purchased for $7,038,000 a 10.2% partnership interest in Barden Cablevision ("Franchisee"), a Michigan general partnership which holds a non-exclusive cable television franchise from Detroit, Michigan ("City"). The seller of that interest was Barden Cablevision of Detroit, Inc. ("Seller"). Applicant proposes to offer 1,000,000 shares ("Shares") of its common stock, at a price of $8.00 per Share, for the purpose of funding the purchase price of the partnership interest. As required by the franchise agreement with the City, Detroit-based investors are required to be able to own 10% of Franchisee and have preferential rights to purchase the Shares during the first 180 days of the offering. The Shares are being offered pursuant to a registration statement on Form S–1.

2. If the proceeds of the offering (net of offering expenses and a reserve fund for future expenses) are insufficient to pay Seller $7,038,000, Applicant will reassign to Seller the unpaid portion of the 10.2% partnership interest in Franchisee for $690,000 per 1% partnership interest.

3. No affiliate of Applicant, Franchisee or Seller will receive any commission in connection with the offering of the Shares.

4. Applicant will not participate in the management of Franchisee. Seller and Detroit Cable TV, Inc. are Franchisee's other general partners. Seller is 95% owned by Barden Communications, Inc., which is owned by Don H. Barden. Barden Communications, Inc. owns or controls three cable television systems in the Detroit area. Detroit Cable TV, Inc. is indirectly owned by Maclean Hunter Limited, a publicly held Canadian corporation which, through subsidiaries, conducts cable television operations in Canada, New Jersey and Michigan.

5. The 10.2% partnership interest in Franchisee is being offered through Applicant rather than Franchisee because it would be cumbersome for the Franchisee to have large numbers of general partners. Moreover, since Applicant, as a general partner of Franchisee, is jointly and severally liable for the liabilities of Franchisees, purchasers of the Shares will be protected by the corporate structure of Applicant. Applicant, though not participating in the management of Franchisee, has all the rights of a general partner under Michigan law such as the right to act against partners who fail to exercise their fiduciary duty. Further, purchasers of the Shares, though not participating directly or indirectly in the management of Franchisee, will have all the rights of shareholders under Michigan law such as the right to bring a shareholder derivative action against the management of Applicant should management fail to properly exercise its duties.

6. Applicant is currently subject to certain reporting requirements of the Securities Exchange Act of 1934. If and when Applicant is no longer subject to such reporting requirements, Applicant agrees to furnish copies of its annual report to shareholders of record.

7. Applicant's assets will consist of its partnership interest in Franchisee and a reserve fund that is expected to be initially between $170,000 and $542,000, depending upon the number of Shares sold. The primary source of cash for dividends by Applicant would be distributions from Franchisee. However, the loan agreement pursuant to which Franchisee expects to obtain approximately $80,000,000 of debt financing prohibits Franchisee from making distributions to its partners on account of their partnership interests so long as any borrowings under the loan agreement are outstanding. Under the terms of the loan agreement, such borrowing need not be repaid in full before the end of 1997. Accordingly, Applicant does not expect to pay any dividends in the foreseeable future.

8. Applicant is not the type of company which the 1940 Act was intended to regulate. It does not hold itself out as or consider itself to be an investment company, but it could be considered a closed-end investment company. Applicant's entire business will depend upon the business of Franchisee and Franchisee's ability to construct and operate effectively a cable television system in the City. Purchasers of the Shares will have the protection of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Michigan Uniform Securities Act. Also, Franchisee is extensively regulated and supervised by the City. Thus, the requested exemption is necessary or appropriate in the public interest, consistent with the protection of investors and fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–29324 Filed 12–30–86; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15488; 812–6333]

Lutheran Brotherhood Variable Insurance Products; Application for Exemption

December 19, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Lutheran Brotherhood Variable Insurance Product Company ("Company"), LBVIP Variable Insurance Account ("Account"), Lutheran Brotherhood Securities Corp.

Relevant 1940 Act Sections: Exemption requested *under* section 6(c) *from* sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2), and 27(d) of the 1940 Act, and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(13), and 22c–1 thereunder.

Summary of Application: Applicants seek an order to permit the deduction of a deferred administrative charge in connection with the issuance of flexibile premium variable life contracts.

Filing Date: The application was filed on April 2, 1986, and amended on November 17, 1986 and December 15, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 13, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington DC 20549. Company, Account, and Lutheran Brotherdood Securities Corp., c/o Otis F. Hilbert, Lutheran Brotherhood Variable Insurance Products Company, 625 Fourth Avenue South, Minneapolis, Minnesota 55415.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Margaret Warnken (202) 272- 2058 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. Applicants propose to offer certain flexible premium variable life insurance contracts ("contracts") funded by the Account. The contracts allow the owner, subject to certain limitations, to vary the frequency and amount of premium payments. The death benefit under each contract will be either (i) the greater of (a) the minimum amount specified in the contract (the "Face Amount") plus the total amount available for investment under the contract (the "Accumulated Value") or (b) a specified percentage of Accumulated Value; or (ii) the greater of (a) the Face Amount or (b) a specified percentage of Accumulated Value, as the owner elects. The owner will have various rights under the contract, including rights to a contract loan, to a partial withdrawal of the contract's Accumulated Value, to a total surrender of the contract, and to cancel a requested increase in Face Amount.

2. The Account, registered as a unit investment trust under the 1940 Act, will invest in shares of LBVIP Series Fund, Inc. ("Fund"), which is registered under the 1940 Act as a management investment company. Lutheran Brotherhood Research Corp., an indirect subsidiary of Lutheran Brotherhood (of which the Company is also an indirect subsidiary), is the investment adviser of the Fund.

3. The contracts provide for various sales, risk and administrative charges deducted from premium payments or from Accumulated Value. Included among these charges is (i) an Intial Monthly Administrative Charge ("IMAC") that will be deducted from Accumulated Value as part of the first 120 Monthly Deductions following contract issuance and (ii) a deferred administrative charge ("DAC") that will be deducted from Accumulated Value if a surrender, lapse or decreease in Face Amount occurs during the first ten years after contract issuance. Similar charges arise after a requested increase in Face Amount. These charges reimburse the Company for administrative expenses related to the issuance of the contract, including medical exams, review of applications for insurance underwriting decisions, and processing of the applications and establishing contract records.

4. The DAC will be deducted in full upon surrender or lapse of the contract or in part upon a requested decrease in Face Amount. The DAC imposed for a requested decrease in Face Amount will be determined by using the DAC then applicable to various parts of the current Face Amount in the following order: (a) The DAC for the most recent increase; (b) the DAC for the next most recent increases successively; and (c) the DAC for the initial Face Amount.

5. Even though the same administrative expenses are covered by both charges, the Company will not be reimbursed twice for these issuance expenses. In general, these two charges have been calculated so that these administrative expenses will be collected either through the IMAC or through the DAC. Each of these charges applies for a ten-year period, and the scheduled reductions in the DAC over this ten-year period have been calculated to take into account the amont of the issuance expenses that would have already been collected through the IMAC. In effect, the collection of the DAC would be an "acceleration" of the amounts that otherwise would have been paid during the first ten years after contract issuance through the IMAC.

6. The amount of each of the IMAC and the DAC will equal an amount per $1,000 of Face Amount based upon the insured's Attained Age of contract issuance and, except for insureds with an Attained Age of contract issuance under 20, whether the insured is a smoker or nonsmoker. For contracts with a Face Amount less than $250,000 at issuance, examples of the maximum DAC per $1000 of Face Amount, which indicate the range of possible charges, are as follows: $3.60 for Attained Ages 0–4; $7.20 (smoker) and $4.80 (nonsmoker) for Attained Ages 30–39; and $8.40 (smoker and nonsmoker) for Attained Ages 60–75. Examples of the IMAC per $1000 Face Amount are: $0.03 for Attained Ages 0–4; $0.06 (smoker) and $0.04 (nonsmoker) for Attained Ages 30–39; and $0.07 (smoker and nonsmoker) for Attained Ages 60–75. For contracts with a Face Amount of $250,000 or more at issuance, examples of the maximum DAC per $1,000 of Face Amount, which indicate the range of possible charges, are as follows: $2.40 for Attained Ages 0–4; $6.00 (smoker) and $3.60 (nonsmoker) for Attained Ages 30–39; and $6.00 (smoker and nonsmoker) for Attained Ages 50–75. Examples of the IMAC per $1000 Face Amount are $0.02 for Attained Ages 0–4; $0.05 (smoker) and $0.03 (nonsmoker) for Attained Ages 30–39; and $0.05 (smoker and nonsmoker) for Attained Ages 50–75.

7. The maximum DAC, as determined at contract issuance, will be reduced as Monthly Deductions are made. Beginning on the Date of Issue and continuing or each Monthly Anniversary until 120 Monthly Deductions have been made, this DAC determined at contract issuance will be reduced in level amounts equal to approximately .83% of the maximum DAC (or a 10% reduction of the maximum DAC on an annual basis). In this way, the DAC will be reduced to zero as of the Monthly Anniversary on which the 120 Monthly Deduction is made.

8. The Company does not anticipate making a profit on the DAC. The DAC does not exceed the amount that would have been imposed under the contract if the expenses of issuing the contract had been recovered through a front-end or a periodic charge, nor does it take into account the time-value of money (which would increase the charge to factor in the investment cost to the Company of deferring the charge).

9. Applicants request exemption from sections 2(a)(32), 22(c), 26(a)(2), 27(c)(1), 27(c)(2) and 27(d) of the 1940 Act and

Rules 6e-3(T)(b)(12), 6e-3(T) (b)(13) and 22c-1 thereunder to the extent necessary to permit the deduction of the DAC.

10. The combination of the IMAC and the DAC is intended to permit a substantial deferral of the payment of issuance expenses, while creating greater equity among contractowners by permitting the collection of a proportionate share of these expenses upon early lapse, surrender or requested decrease in Face Amount. First, permitting a substantial deferral of these charges means that contractowners can realize an advantage of increased earnings because they have more invested for them under the contract for a longer period of time. Second, permitting a substantial deferral of these charges means that deductions for the cost of insurance may be lower because the net amount at risk may be less due to a greater Accumulated Value. Third, if an insured dies before the IMAC has been collected in full, and if no lapse, surrender or requested decrease in Face Amount has occurred, these charges are not deducted from the death benefit; as a result, the contract owner would have received the primalry benefit of the contracts (insurance protection) without paying the additional amount that would have otherwise been collected through the IMAC or the DAC.

11. If the Company could not impose the DAC upon lapse, surrender or a requested decrease in Face Amount, it would be required to recover these charges over a shorter period of time (so as to increase the possibility of collection before surrender, lapse or a requested decrease in Face Amount) or to increase the amount of the IMAC for persisting contractowners (so as to fully recover these administrative expenses). If the Company recovered these charges over a shorter period of time, the advantages of a substantial deferral of these charges would be reduced. If the Company increased the amount of the IMAC for persisting contractowners, these persisting contractowners would pay a greater total charge, which would result in less Accumulated Value available for investment under the contracts and less equity between those contractowners who persist and those contractowners who lapse, surrender, or request a decrease in Face Amount. The combination of the IMAC and the DAC provided by the contract permits substantial deferral of these payments for persisting contractowners while permitting the recovery of a proportionate share of these issuance expenses upon and early surrender, lapse or requested decrease in Face Amount.

Applicants' Condition

If the requested order is granted, the Applicants agree that if to the extent Rule 6e-3(T) is amended to provide exemptive relief from any provision of the 1940 Act or the rules thereunder on terms and conditions different from any exemption from such provision granted in the order requested in this application, then Applicants shall take such steps as may be necessary to comply with Rule 6e-3(T), as amended, to the extent Rule 6e-(T) is applicable.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29326 Filed 12-30-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-23931; File No. SR-OCC-86-25]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corp.

On December 11, 1986, the Options Clearing Corporation ("OCC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), concerning the statement of foreign currency option exercises and assignments. The Commission is publishing this notice to solicit comment on the rule change.

The proposed rule change consists of a Credit and Security Agreement between Citibank, N.A. and OCC designed to effectuate Delivery-versus-Payment ("DVP") settlement [1] of exercises and assignments of Deutsche Mark options. OCC currently has a similar agreement in place with Bank of America for settlements of exercises and assignments of currency options. Under the proposed agreement, Citibank, N.A. would replace Bank of America for settlement of exercises of Deutsche Mark options.

Like the Bank of America agreement, the proposed agreement provides for an overdraft facility to ensure deliveries to Clearing Members notwithstanding the default of a Deliveries or Paying Clearing Member. These overdrafts would be secured by the U.S. dollar settlement amounts held in OCC's accounts at Citibank branches in New York and Frankfurt for Deutsche Mark overdrafts, and the Deutsche Marks held in OCC's account at the Frankfurt branch of Citibank for U.S. dollar overdrafts. Loans resulting from overdrafts would also be secured by OCC's right to apply a defaulting Clearing Member's margin or Clearing Fund deposits against the defaulting Clearing Member's outstanding obligations, as well as OCC's right to assess all Clearing Members' Clearing Fund deposits for related losses.

Because of the rapid growth of the foreign currency options market, OCC believes it is in the best interest of OCC, the industry and the investing public to use more than one bank for settlements of exercises and assignments of foreign currency options. OCC states in its filing that the proposed agreement will promote the and accurate settlement of foreign currency option exercises, while safeguarding securities and funds in OCC's custody or control, by diversifying OCC's foreign currency settlement activities.

The foregoing rule has become effective pursuant to section 19(a)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities exchange Act of 1934

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. section 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by January 21, 1987.

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[1] *See* OCC Rule 1606A.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-29327 Filed 12-30-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/1029]

Study Group 2 of the U.S. Organization International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 22, 1987 in Room 521 of the National Aeronautics and Space Administration, 600 Independence Avenue, SW., Washington, DC. The meeting will begin at 10:00 a.m.

Study Group 2 deals with matters relating to the communications for scientific satellites, space probes, spacecraft, exploration satellites (e.g., meteorological and geodetic) and to interference problems concerning the radio astronomy and radar astronomy services. The purpose of the meeting is to discuss preparations for the Interim Meeting of international Study Group 2 in the Fall of 1987.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard E. Shrum, State Department, Washington, DC 20520; telephone 202 647-2592.

Dated: December 16, 1986.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 86-29293 Filed 12-30-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1026]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Tuesday, January 13, 1987 at 9:30 a.m. in Room 1105, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The proposed agenda:

A. Debriefing of recent Study Group Meetings:

Study Group I, November, 1986
Study Group VIII, December, 1986
PC/WATTC, December, 1986

B. Discussion possible U.S. contributions for upcoming meetings of CCITT:

Study Group I,
Study Group III,

C. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC telephone (202) 647-5832. All attendees must use the C Street entrance to the building.

Dated: December 12, 1986.

Earl Barbely,

Director, Office of Technical Standards and Development.

[FR Doc. 86-29294 Filed 12-30-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1027]

Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The meeting of Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Tuesday, January 13, 1987, at 1:30 p.m. in Room 1105, Department of State, 2201 C Street, NW., Washington, DC.

The agenda for the meeting is as follows:

1. Debriefing of recent meetings of Study Group and/or working parties;
2. Consideration of contributions of upcoming CCITT Study Group and/or working parties of Study Group XVIII;
3. Any other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, D.C.; telephone (202) 647-5832. All attendees must use the C Street entrance to the building.

Dated: December 12, 1986.

Earl Barbely,

Director, Office of Technical Standards and Development.

[FR Doc. 86-29295 Filed 12-30-86; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1028]

A Joint Meeting of the ISDN/JWP and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the ISDN Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on Thursday, January 15, 1987 in room 1205, State Department, 2201 C Street NW., Washington, DC. The meeting will begin at 9:30 a.m.

The proposed agenda for the meeting is as follows:

1. Report on CCITT Study Group XI meeting in Geneva, November, 1986.
2. Consideration of contributions to the Study Group XVIII ISDN Group of Experts meetings in Brasilia, February 1987.
3. Consideration of other contributions to the Study Groups XVIII and XI.
4. Any other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advice the office of Mr. Earl Barbely, State Department, Washington, DC.; telephone (202) 647-5832. All attendees must use the C Street entrance to the building.

Dated: December 12, 1986.

Dominic Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 86-29296 Filed 12-30-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular—Airworthiness Criteria for the Approval of Airborne Windshear Warning Systems in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed Advisory Circular and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides guidance for the airworthiness approval of airborne windshear warning systems in transport category airplanes.

DATE: Comments must be received on or before April 30, 1987.

ADDRESS: Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Transport Standards Staff, ANM–110, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Patricia Siegrist, Transport Standards Staff, at the above address, telephone (206) 431–2126.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the subject of the AC and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

Background

This advisory circular provides guidance for the airworthiness approval of both "annunciation only" and "annunciation with escape guidance" airborne windshear warning systems. The aspects of system criticality and the treatment of certain system failure cases are addressed. The advisory circular also provides guidance information regarding the scope of a ground based simulation program and discusses criteria for selecting the windfield models for such a program. In addition, the advisory circular discusses various aspects of system integration and provides equipment installation guidance and test criteria.

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

Leroy A. Keith,

Manager, Aircraft Certification Division.

[FR Doc. 86–29375 Filed 12–30–86; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map Notice

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Sarasota-Manatee Airport Authority, Sarasota, Florida, for the Sarasota-Bradenton Airport under the provisions of Title I of the Aviation Safety and Noise abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is November 14, 1986.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, Plans and Programs Metro Area Manager, Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32812, (305) 648–6583.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Sarasota-Bradenton Airport are in compliance with applicable requirements of Part 150, effective November 14, 1986.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979, hereinafter referred to as "the Act", an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations, Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Sarasota-Manatee Airport Authority, Sarasota, Florida. The specific maps under consideration are "1986 Noise Exposure Map" and "1991 Noise Exposure Map" in the submission. The FAA has determined that these maps for the Sarasota-Bradenton Airport are in compliance with applicable requirements. This determination is effective on November 14, 1986. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps, the FAA's evaluation of the maps are

available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, FL 32812

Mr. Albert L. McDill, Executive Director, Sarasota-Manatee Airport Authority, Sarasota-Bradenton Airport, 6121 Twining Boulevard, Sarasota, FL 33580

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, November 14, 1986.

James E. Sheppard,

Manager, Orlando Airports District Office.

[FR Doc. 86-29223 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 156—Potential Interference to Aircraft Electronic Equipment From Devices Carried Aboard; 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 156 on Potential Interference to Aircraft Electronic Equipment from Devices Carried Aboard to be held on January 27-28, 1987, 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 eleventh meeting; (3) review of task assignments; (4) review the first draft of the committee final report; (5) assignment of tasks; and (6) 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 statemcnt to the committee at any time.

Issued in Washington, DC, on December 22, 1986.

S.B. Poritzky,

Designated Officer.

[FR Doc. 86-29225 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 160-406 MHz Emergency Locator Transmitters (ELT); 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 160 on 406 MHz Emergency Locator Transmitters (ELT) to be held on January 20-22, 1987, 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) Introductory remarks; (2) approval of the first meeting's minutes; (3) review and discuss EUROCAE WG-29 activities; (4) report on potential problems of frequency interference in the 406 MHz band; (5) FCC NPRM review; (6) review of initial draft sections from task assignments; (7) task assignments; (8) other business; and (9) date and place of next meeting.

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 December 22, 1986.

S.B. Poritzky,

Designated Officer.

[FR Doc. 86-29226 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Holmes County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed interchange addition on Interstate 10 at its intersection with County Road 181 near Westville.

FOR FURTHER INFORMATION CONTACT: David Van Leuven, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone: (904) 681-7231.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an EIS for a proposal to add an interchange to I-10 at its intersection with County Road 181 near Westville, Holmes County, Florida. The proposed interchange would allow egress and ingress between traffic using I-10 and County Road 181, which is considered necessary to provide for unmet existing and future circulation demands.

Alternatives under consideration include: (1) Taking no action; (2) construction of a full diamond interchange; and (3) construction of a modified diamond interchange. No alternate corridors are being considered.

Early notification of the proposed action to Federal, State, and local agencies has been sent with a solicitation of comments. Informational meetings will be held as necessary to inform the public of progress on this proposal. Alternatives will be presented to the public and a formal public hearing will be conducted. Public notice will be given of all meetings and the public hearing. Adjacent property owners of record will be notified in writing as will all public officials, private organizations, and previously identified private citizens. The draft EIS will be made available for public and agency review and comment. A formal scoping meeting is planned at the project site during the early part of 1987.

To assure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued On: December 18, 1986.

James E. St. John,

Assistant Division Administrator, Tallahassee, Florida.

[FR Doc. 86-29299 Filed 12-30-86; 8:45 am]

BILLING CODE 4910-22-M

Corrections

Federal Register
Vol. 51, No. 250
Wednesday, December 31, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Parts 301, 302, 303, 304, 305, 306, 307, 313, 314, 315, 316, 319, 322, 325, 330, 332, 353

Acquisition Regulation; Administrative and Procedural Amendments

Correction

In rule document 86–27488 beginning on page 44292 in the issue of Tuesday, December 9, 1986, make the following corrections:

1. On page 44292, in the third column, in the **SUMMARY**, in the fourth line, "top" should read "to", and in **SUPPLEMENTARY INFORMATION**, third paragraph, in the fifth line, "1987" should read "1984".

§ 302.100 [Corrected]

2. On page 44293, in the first column, in amendatory instruction 4a, in the third line, "leading" should read "heading".

§ 322.604–2 [Corrected]

3. On page 44294, in the second column, insert the following heading above paragraph (c)(1), "

§ 322.604–2 Regulatory exemptions. "

§325.102 [Corrected]

4. On page 44294, in the second column, the paragraph following the heading

"325.102 Policy" should be designated as paragraph "(b)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO–056–GNC]

Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During Fiscal Year 1987

Correction

In notice document 86–27698 beginning on page 44524 in the issue of Wednesday, December 10, 1986, make the following corrections:

1. On page 44529, in the second column, in the 11th indented paragraph, in the fourth line, "3.0" should read "1.0".

2. On page 44529, in the third column, in the third indented paragraph from the bottom of the page, in the second line, "3.0" should read "1.0".

BILLING CODE 1505-01-D

federal register

Wednesday
December 31, 1986

Part II

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, including Section 1014, I herewith report seven new deferrals of budget authority totaling $5,017,441,000 and four revised deferrals of budget authority now totaling $5,131,425,194.

The deferrals affect accounts in Funds Appropriated to the President, and the Departments of Defense—Military, Health and Human Services, and Transportation.

The details of these deferrals are contained in the attached report.

Ronald Reagan.

The White House,
December 15, 1986.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D87-22	Foreign military sales credit.....	$ 4,040,441
D87-1A	Economic support fund.....	2,446,470
D87-23	Military assistance.....	847,000
D87-24	International military education and training.....	2,000
	Agency for International Development:	
D87-25	International disaster assistance.....	57,000
	Special Assistance for Central America	
D87-26	Assistance for the Nicaraguan Democratic Resistance.....	60,000
D87-27	Promotion of stability and security in Central America.....	1,000
	Department of Defense - Military:	
	Military Construction:	
D87-6A	Military construction, Defense.....	1,318,502
	Family Housing:	
D87-7A	Family housing, Defense.....	266,965
	Department of Health and Human Services:	
D87-28	Health Resources and Services Administration: Indian catastrophic health emergency Fund.....	10,000
	Department of Transportation:	
	Federal Aviation Administration:	
D87-16A	Facilities and equipment (Airport and airway trust fund).....	1,099,488
	Total, deferrals.....	10,148,866

SUMMARY OF SPECIAL MESSAGES
FOR FY 1987
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Second special message:		
New items	---	5,017,441
Revisions to previous special messages	---	4,153,255
Effects of second special message	---	9,170,696
Amounts from previous special messages that are changed by this message (changes noted above)	---	978,170
Subtotal, rescissions and deferrals	---	10,148,866
Amounts from previous special messages that are not changed by this message	---	857,443
Total amount proposed to date in all special messages	---	11,006,310

437

Deferral No: D87-22

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority.....** $4,040,441,000 (P.L. 99-500 & 591)
Bureau: International Security Assistance	**Other budgetary resources**
Appropriation title and symbol: Foreign military sales credit 1/ 1171082	**Total budgetary resources** 4,040,441,000
	Amount to be deferred: **Part of year** $4,040,441,000 **Entire year**
OMB identification code: 11-1082-0-1-152	**Legal authority** (in addition to sec. 1013): | X | Antideficiency Act
Grant program: | | Yes | X | No	| | Other
Type of account or fund: | X | Annual | | Multiple-year (expiration date) | | No-Year	**Type of budget authority:** | X | Appropriation | | Contract authority | | Other

Justification: The President is authorized by the Arms Export Control Act to sell or finance by credit or guarantees articles and defense services to friendly countries to facilitate the common defense. Under Section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under the Act, including determining whether there shall be a sale to a country and the amount thereof. Executive Order 11958 further requires the Secretary of State to obtain the prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding standards and criteria for credit and guarantee transactions that are based upon national security and financial policies. These funds have been deferred pending approval of specific loans to eligible countries by the Departments of State, Defense and the Treasury. Consultation among these Departments will ensure that each approved program is consistent with the foreign national security and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-32).

D87-1A

Supplementary Report

Report pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D87-1 transmitted to the Congress on September 26, 1986.

This revised deferral of Funds Appropriated to the President for the Economic support fund increases the amount previously reported as deferred from $95,000,000 to $2,446,470,091. This increase of $2,351,470,091 is attributable to funds provided in the Foreign Assistance and Related Programs Appropriation Act, 1987, as included in Public Laws 99-500 and 99-591. Funds are deferred pending approval of specific grants and loans by the Secretary of State.

Deferral No: D87-1A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Funds Appropriated to the President

Bureau:
International Security Assistance

Appropriation title and symbol:

Economic support fund 1/

115/71037 11X1037 *117/81037
*1171037 116/71037

OMB identification code:

11-1037-0-1-152

Grant program:
[X] Yes [ ] No

Type of account or fund: *

[X] Annual
[X] Multiple-year 9/30/87 9/30/88 (expiration date)
[X] No-Year

New budget authority..... *$3,250,000,000
(P.L. 99-500 & 591)
Other budgetary resources * 396,470,091

Total budgetary resources *$3,646,470,091

Amount to be deferred:
Part of year *$2,446,470,091
Entire year

Legal authority (in addition to sec. 1013):
[X] Antideficiency Act
[ ] Other

Type of budget authority:
[X] Appropriation
[ ] Contract authority
[ ] Other

Coverage: 1/

Appropriation	Symbol	Identification Code	Amount Deferred
Economic Support Fund...	115/71037	11-1037-0-1-152	90,000,000
*Economic Support Fund...	11X1037	11-1037-0-1-152	6,470,091
Economic Support Fund...	116/71037	11-1037-0-1-152	---
*Economic Support Fund...	1171037	11-1037-0-1-152	300,000,000
*Economic Support Fund...	117/81037	11-1037-0-1-152	2,050,000,000
			2,446,470,091

Justification: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State. This will insure that each approved program is consistent with the foreign, national security and financial policies of the U.S. and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-24A).

* Changed from previous report.

429

Deferral No: D87-23

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority.....** $ 900,000,000 (P.L. 99-500 & 591)
Bureau: International Security Assistance	**Other budgetary resources**
Appropriation title and symbol: Military assistance 1/ 1171080	**Total budgetary resources** 900,000,000
	Amount to be deferred: Part of year $ 847,000,000
	Entire year
OMB identification code: 11-1080-0-1-152	**Legal authority** (in addition to sec. 1013): |X| Antideficiency Act
Grant program: |___| Yes |X| No	|___| Other
Type of account or fund:	**Type of budget authority:**
|X| Annual	|X| Appropriation
|___| Multiple-year (expiration date)	|___| Contract authority
|___| No-Year	|___| Other

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military assistance to any friendly country or international organization if he finds that it will strengthen the security of the United States or promote world peace. Executive Order No. 12163 of September 29, 1979, as amended, delegates certain Presidential functions under the FAA to the Secretaries of State and Defense. These funds are being deferred until approval of specific programs by the Departments of State, Treasury, and Defense. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security and financial policies of the United States and will not exceed the limit of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-33).

429

Deferral No: D87-24

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority.....** $ 56,000,000 (P.L. 99-500 & 591)
Bureau: International Security Assistance	**Other budgetary resources**
Appropriation title and symbol: International military education and training 1/ 1171081	**Total budgetary resources** 56,000,000
	Amount to be deferred: Part of year $ 2,000,000
	Entire year
OMB identification code: 11-1081-0-1-152	**Legal authority** (in addition to sec. 1013): |X| Antideficiency Act
Grant program: |__| Yes |X| No	|__| Other
Type of account or fund:	**Type of budget authority:**
|X| Annual	|X| Appropriation
|__| Multiple-year (expiration date)	|__| Contract authority
|__| No-Year	|__| Other

Justification: Pursuant to the Foreign Assistance Act (FAA) of 1961, as amended, the President is authorized to furnish grant military training to friendly countries or international organizations. Executive Order No. 12163 of September 29, 1979, as amended, delegates certain of the President's functions under the FAA to the Secretaries of State and Defense. $2,000,000 is being deferred pending apportionment of the funds for training in anti-narcotics operations. It is anticipated that funds will be apportioned by December 5. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-34).

554 **Deferral No:** D87-25

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority.....** $ 70,000,000 (P.L. 99-500 & 591)
Bureau: Agency for International Development	**Other budgetary resources** 6,400,000
Appropriation title and symbol: International Disaster Assistance, Executive 1/ 11X1035	**Total budgetary resources** 76,400,000
	Amount to be deferred: Part of year 57,000,000
	Entire year ____
OMB identification code: 11-1035-0-1-151	**Legal authority** (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other ____
Type of account or fund:	**Type of budget authority:**
[ ] Annual	[X] Appropriation
[ ] Multiple-year ____ (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other ____

Justification: The International disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout the world. The Foreign Assistance and Related Programs Appropriations Act, 1987 provided $70 million for disaster assistance activities, including not less than $50 million for earthquake relief, reconstruction, and rehabilitation in El Salvador. $57 million is deferred, including $45 million in aid to El Salvador, pending the development of country-specific plans to insure that aid is provided in an efficient manner to those most in need. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-59).

Deferral No: D87-26

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority**..... $ 100,000,000 (P.L. 99-500 & 591)
Bureau: Special Assist. for Central America	**Other budgetary resources** 100,000,000
Appropriation title and symbol: Assistance for the Nicaraguan Democratic Resistance 1171090	**Total budgetary resources** 100,000,000
	Amount to be deferred: Part of year $ 60,000,000
	Entire year
OMB identification code: 11-1090-0-1-051	**Legal authority** (in addition to sec. 1013):
Grant program: |X| Yes |___| No	|X| Antideficiency Act
	|X| Other P.L. 99-500 & 591
Type of account or fund:	**Type of budget authority:**
|X| Annual	|X| Appropriation
|___| Multiple-year _____ (expiration date)	|___| Contract authority
|___| No-Year	|___| Other _____

Justification: Section 206 of Title II of the Military Construction Appropriations Act, 1987, provided $100 million to provide assistance to the Nicaraguan Democratic Resistance. It provided that $60 million would not be available until necessary Presidential determinations have been made and reported to the Congress. It is anticipated that the funds will then be released. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

209

Deferral No: D87-27

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President **Bureau:** Special Assist. for Central America	**New budget authority**..... $ _____ (P.L. _____) **Other budgetary resources** 2,000,000 **Total budgetary resources** 2,000,000
Appropriation title and symbol: Promotion of Stability and Security in Central America 11X1091	**Amount to be deferred:** **Part of year** $ 1,000,000 **Entire year** _____
OMB identification code: 11-1091-0-1-053 **Grant program:** |X| Yes |__| No	**Legal authority** (in addition to sec. 1013): |X| Antideficiency Act |__| Other_____
Type of account or fund: |__| Annual |__| Multiple-year _____ (expiration date) |X| No-Year	**Type of budget authority:** |X| Appropriation |__| Contract authority |__| Other_____

Justification: The Military Construction appropriations section of the 1987 Continuing Resolution (P.L. 99-500 and 591) provided for the transfer to the President of funds previously appropriated for Assistance for Implementation of a Contadora agreement. The transferred funds are to facilitate the participation of Costa Rica, El Salvador, Guatemala, and Honduras in regional meetings and negotiations to promote peace, stablility, and security in Central America. Only a portion of the funds are needed to conduct this activity at this time and the amounts not needed are deferred. Ongoing negotiations among the Central American democracies or other developments may result in conditions that will require the expenditure of the deferred funds later in fiscal year 1987. The Department of State will monitor the progress of the negotiations and recommend further disposition of the funds as appropriate. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

D87-6A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D87-6 transmitted to Congress on September 26, 1986.

This increases by $1,316,152,000 the previous deferral of $2,350,000 in the Department of Defense, Military construction, resulting in a total deferral of $1,318,502,000. The increase in the amount deferred results from deferral of funds included in the 1987 Military Construction Appropriation Act.

Deferral No: D87-6A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense - Military

Bureau:
Military Construction

Appropriation title and symbol:
See Coverage Section below 2/

OMB identification code:
See Coverage Section below 2/

Grant program:
|___| Yes |_X_| No

Type of account or fund:

|___| Annual
|_X_| Multiple-year Sept. 30, 1987 / Sept. 30, 1988 (expiration date)
|_X_| No-Year Sept. 30, 1989 / Sept. 30, 1990 / *Sept. 30, 1991

New budget authority.....*$ 5,125,429,000
*(P.L. 99-500 & 591)
Other budgetary resources* 3,781,227,000
Total budgetary resources* 8,906,656,000 1/

Amount to be deferred:
Part of year _____
Entire year * 1,318,502,000

Legal authority (in addition to sec. 1013):
|_X_| Antideficiency Act
|___| Other_____

Type of budget authority:
|_X_| Appropriation
|___| Contract authority
|___| Other_____

Coverage: 2/

Appropriation	Symbol	OMB Identification Code	Deferred
*Military construction, Army.....	217/12050	21-2050-0-1-051	363,960,000
Military construction, Army.....	216/02050	21-2050-0-1-051	---
Military construction, Army.....	215/92050	21-2050-0-1-051	---
Military construction, Army.....	214/82050	21-2050-0-1-051	---
Military construction, Army.....	213/72050	21-2050-0-1-051	---
*Military construction, Navy.....	177/11205	17-1205-0-1-051	259,475,000
Military construction, Navy.....	176/01205	17-1205-0-1-051	---
Military construction, Navy.....	175/91205	17-1205-0-1-051	---
Military construction, Navy.....	174/81205	17-1205-0-1-051	---
Military construction, Navy.....	173/71205	17-1205-0-1-051	---
*Military construction, Air Force.	577/13300	57-3300-0-1-051	313,632,000
Military construction, Air Force.	576/03300	57-3300-0-1-051	---
Military construction, Air Force.	575/93300	57-3300-0-1-051	---
Military construction, Air Force.	574/83300	57-3300-0-1-051	---
Military construction, Air Force.	573/73300	57-3300-0-1-051	---

2
D87-6A

Appropriation	Symbol	OMB Identification Code	Deferred
*Military construction, Defense Agencies.....	977/10500	97-0500-0-1-051	128,110,000
Military construction, Defense Agencies.....	976/00500	97-0500-0-1-051	---
Military construction, Defense Agencies.....	975/90500	97-0500-0-1-051	---
Military construction, Defense Agencies.....	974/80500	97-0500-0-1-051	2,350,000
Military construction, Defense Agencies.....	973/70500	97-0500-0-1-051	---
*Military construction, Army National Guard.....	217/12085	21-2085-0-1-051	31,502,000
Military construction, Army National Guard.....	216/02085	21-2085-0-1-051	---
Military construction, Army National Guard.....	215/92085	21-2085-0-1-051	---
Military construction, Army National Guard.....	214/82085	21-2085-0-1-051	---
Military construction, Army National Guard.....	213/72085	21-2085-0-1-051	---
*Military construction, Air National Guard.....	577/13830	57-3830-0-1-051	20,885,000
Military construction, Air National Guard.....	576/03830	57-3830-0-1-051	---
Military construction, Air National Guard.....	575/93830	57-3830-0-1-051	---
Military construction, Air National Guard.....	574/83830	57-3830-0-1-051	---
Military construction, Air National Guard.....	573/73830	57-3830-0-1-051	---
*Military construction, Army Reserve.....	217/12086	21-2086-0-1-051	9,183,000
Military construction, Army Reserve.....	216/02086	21-2086-0-1-051	---
Military construction, Army Reserve.....	215/92086	21-2086-0-1-051	---
Military construction, Army Reserve.....	214/82086	21-2086-0-1-051	---
Military construction, Army Reserve.....	213/72086	21-2086-0-1-051	---
*Military construction, Naval Reserve.....	177/11235	17-1235-0-1-051	22,005,000
Military construction, Naval Reserve.....	176/01235	17-1235-0-1-051	---
Military construction, Naval Reserve.....	175/91235	17-1235-0-1-051	---
Military construction, Naval Reserve.....	174/81235	17-1235-0-1-051	---
Military construction, Naval Reserve.....	173/71235	17-1235-0-1-051	---

Appropriation	Symbol	OMB Identification Code	Deferred
*Military construction, Air Force Reserve.....	577/13730	57-3730-0-1-051	17,400,000
Military construction, Air Force Reserve.....	576/03730	57-3730-0-1-051	---
Military construction, Air Force Reserve.....	575/93730	57-3730-0-1-051	---
Military construction, Air Force Reserve.....	574/83730	57-3730-0-1-051	---
Military construction, Air Force Reserve.....	573/73730	57-3730-0-1-051	---
*North Atlantic Treaty Organization Infrastructure.....	97X0804	97-0804-0-1-051	150,000,000
*Total.....			$ 1,318,502,000

Justification: These funds are deferred due to lack of project authorization or to administrative delays, such as project designs not being completed and incomplete coordination of projects with other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon authorization or completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ Includes all accounts included under this appropriation title.

2/ These accounts were the subject of a similar deferral in 1986 (D86-4A).

* Revised from previous report.

D87-7A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D87-7 transmitted to the Congress on September 26, 1986.

This increases by $190,022,000 the previous deferral of $76,943,000 in the Department of Defense, Family housing, resulting in a total deferral of $266,965,000. The increase in the amount deferred results from deferral of funds included in the 1987 Military Construction Appropriation Act.

Deferral No: D87-7A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY:
Department of Defense - Military

Bureau:
Family Housing, Defense

Appropriation title and symbol:

See Coverage Section below 1/

OMB identification code:
See Coverage Section below 1/

Grant program:
|___| Yes |_X_| No

Type of account or fund:

|___| Annual 9/30/87
9/30/88
|_X_| Multiple-year 9/30/89
(expiration date)
|___| No-Year 9/30/90
*9/30/91

New budget authority..... *$3,113,914,000
(P.L. 99-500 & 591)
Other budgetary resources* 371,897,000

Total budgetary resources* 3,485,811,000 2/

Amount to be deferred:
Part of year *$_____
Entire year * 266,965,000

Legal authority (in addition to sec. 1013):
|_X_| Antideficiency Act
|___| Other_____

Type of budget authority:
|_X_| Appropriation
|___| Contract authority
|___| Other_____

Coverage: 1/

Appropriation	Symbol	OMB Identification Code	Deferred
* Family housing, Navy.....	177/10703	17-0703-0-1-051	82,350,000
Family housing, Navy.....	176/00703	17-0703-0-1-051	---
* Family housing, Army.....	217/10702	21-0702-0-1-051	138,500,000
Family housing, Army.....	216/00702	21-0702-0-1-051	---
* Family housing, Air Force.....	577/10704	57-0704-0-1-051	34,315,000
* Family housing, Air Force.....	576/00704	57-0704-0-1-051	---
Family housing, Air Force.....	575/90704	57-0704-0-1-051	11,800,000
Family housing, Air Force.....	574/80704	57-0704-0-1-051	---
Family housing, Air Force.....	573/70704	57-0704-0-1-051	---
			*266,965,000

Justification: These funds are deferred due to administrative delays, such as project designs not being completed and incomplete coordination of projects with other Federal agencies or local government agencies. Funds will be apportioned for individual projects throughout the year upon completion of project design and/or coordination. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-27A).

2/ Includes all accounts included under this appropriation title.

* Revised from previous report.

215

Deferral No: D87-28

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health & Human Services	New budget authority..... $ 10,000,000 (P.L. 99-500 & 591)
Bureau: Health Resources & Services Admin.	Other budgetary resources -0-
Appropriation title and symbol: Indian Catastrophic Health Emergency Fund 75X0390	Total budgetary resources 10,000,000
	Amount to be deferred: Part of year $ 10,000,000
	Entire year
OMB identification code: 75-0390-0-1-551	**Legal authority** (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other
Type of account or fund:	**Type of budget authority:**
[ ] Annual	[X] Appropriation
[ ] Multiple-year (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other

Justification: This program provides medical care, public health services, and health profession scholarships for American Indians and Alaska Natives. The 1987 Appropriation Act created an Indian Catastrophic Emergency Health Fund, administered by the Indian Health Service (IHS) in the Department of Health and Human Services (HHS). The general purpose of the fund as stated in Senate Report No. 99-397 is to "enable the IHS to meet the extraordinary costs associated with the treatment of catastrophic illnesses falling within the medical priorities of the IHS." To ensure that this fund is used for its intended purpose, HHS is preparing a set of administrative guidelines to govern the disbursement of catastrophic health care funds. These funds are being deferred pending completion of HHS' administrative guidelines. HHS expects that these administrative guidelines will be published in the Federal Register by early calendar year 1987. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

D87-16A

Supplementary Report

Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D87-16 transmitted to Congress on September 26, 1986.

This increases by $295,611,064 the previous deferral of $803,877,039 in the Department of Transportation's Facilities and equipment, FAA trust fund account, resulting in a total deferral of $1,099,488,103. The increase results from projects and equipment funded in the Department of Transportation Appropriation Act, 1987, that cannot be constructed or contracted for this year.

Deferral No: D87-16A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Transportation	**New budget authority.....** *$ 804,584,000 (P.L. 99-500 & 591)
Bureau: Federal Aviation Administration	**Other budgetary resources** *1,404,321,486
Appropriation title and symbol: Facilities and equipment (Airport and airway trust fund) 1/ 69X8107 693/78107 695/98107 *697/18107 694/88107 696/08107	**Total budgetary resources** *2,208,905,486
	Amount to be deferred: Part of year $ ____
	Entire year *$1,099,488,103
OMB identification code: 69-8107-0-7-402	**Legal authority** (in addition to sec. 1013): |X| Antideficiency Act
Grant program: |__| Yes |X| No	|__| Other ____
Type of account or fund:	**Type of budget authority:**
|__| Annual 693/78107 9/30/87; 694/88107 9/30/88	|X| Appropriation
|X| Multiple-year 695/98107 9/30/89 (expiration date)	|__| Contract authority
|X| No-Year 696/08107 9/30/90; *697/18107 9/30/91	|__| Other ____

Justification: Funds from this account are used to continue to procure specific Congressionally-approved facilities and equipment for the expansion and modernization of the National Airspace System. The projects financed from this account include construction of buildings, the purchase of new equipment for new or improved air traffic control towers, automation of the en route airway control system, and expansion/improvement of navigational and landing aid systems. These activities were justified and provided for in the Department's regular budget submissions and were appropriated by Congress for the year in which requested. Due to the lengthy procurement and construction time for these interrelated facilities and complex equipment systems, it is not possible to obligate all the funds necessary to complete each project in the year funds were appropriated. Therefore, it is necessary to apportion funds so that sufficient resources will be available in future periods to complete these projects. This action is consistent with FAA's full funding approach and Congressional intent to provide multi-year funding for the total costs of projects. This action is taken under provisions of the Antideficiency Act (31 U.S.C. 1512), which authorizes the establishment of reserves for contingencies.

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1986 (D86-29A).

* Revised from previous report.

[FR Doc. 86-29442 Filed 12-30-86; 8:45 am]
BILLING CODE 3110-01-C

federal register

Wednesday
December 31, 1986

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 271, 272, 273, and 277

Food Stamp Program; Employment and Training Requirements; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, 273, and 277

[Amdt. No. 281]

Food Stamp Program; Employment and Training Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On October 1, 1986 the Department published a rulemaking at 47 FR 35152 which proposed extensive changes in the work requirements of the Food Stamp Program based upon provisions in the Food Security Act of 1985 (Pub. L. 99–198). The Act requires that no later than April 1, 1987 every State agency shall implement an employment and training program designed by the State agency and approved by the Secretary of Agriculture. The intent of the new requirement is to ensure that able-bodied food stamp recipients are involved in meaningful work-related activities which will eventually lead to paid employment and a decreased dependency on assistance programs. This rule amends and finalizes the provisions of the October 1, 1986 rulemaking based on the extensive and detailed public comments received by the Department.

DATES: The provisions of this rulemaking are effective January 30, 1987. State employment and training plans must be received by the Department by March 2, 1987. An employment and training program shall be implemented in each State, pending FNS approval, by April 1, 1987.

ADDRESS: One copy of the plan should be sent to the FNS National Office at 3101 Park Center Drive, Alexandria, VA 22302 and one to the appropriate FNS Regional Office.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Patricia Warner, Food and Nutrition Service, Chief, Administration and Design Branch, Family Nutrition Programs, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3383.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this action as non-major.

The effect of this action on the economy will be less than $100 million. This final action will have no effect on costs or prices. Competition, employment investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice of 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this final action does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program. Potential and current participants will be affected because they will have to fulfill the work requirements established by State agencies under the guidance set forth in this rulemaking.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under that Act. The OMB approval number for these requirements is 0584–0339.

Background

This rule puts into final regulatory form the work related amendments made to the Food Stamp Act of 1977 by the Food Security Act of 1985, Pub. L. 99–198, Title XV, 99 Stat. 1566, December 23, 1985 and some of the administrative provisions proposed by the Department in its October 1, 1986 proposed rule, 51 FR 35152 *et seq.* With this rule, food stamp job search is replaced as the major work related activity of the Food Stamp Program by employment and training (E&T) programs. As a result, States will be given greater flexibility in the choice of employment and training services they wish to offer food stamp work registrants, subject to approval by the Secretary.

The work provisions of Pub. L. 99–198 were enacted "for the purpose of assisting food stamp recipients in gaining skills, training or experience that will increase their ability to obtain regular employment." Section 1517(a)(2), 99 Stat. 1574. A major point of emphasis in the legislation is that States be given maximum flexibility in designing the programs they wish to operate. The role of the Department in approving State plans and monitoring State performance is to ensure that each State provides a meaningful avenue for its able-bodied food stamp recipients to increase their employment prospects. These goals are achieved through this final rulemaking.

The Department received a substantial number of comments on the proposed rulemaking. The comments were thorough, persuasive, and well documented and the Department appreciates the effort which went into their preparation and submission. All comments received by November 14 were reviewed and given full consideration for inclusion in this rulemaking. All others were read and considered.

In response to the suggestions of the majority of commenters, the Department has made a number of changes to the proposed rule which we believe will result in better, more efficient and effective employment and training programs. Because of the April 1, 1987 statutory implementation date the Department is eager to publish this final rule as early as possible and a number of discretionary provisions which appeared in the October 1, 1986 rule, specifically those pertaining to voluntary quit and workfare, will be published in a subsequent rulemaking. Comments received on these issues will receive full consideration.

Implementation

A number of comments were received addressing the implementation time frames in the proposed rule. A few commenters suggested that the 30-day comment period be extended. The Department does not feel such an extension is necessary or appropriate in light of the need of State agencies to have final rules in places as a basis for planning and implementing their employment and training programs to meet the statutory April 1, 1987 deadline. As of November 14, 1986, the Department received 50 comments from State agencies, 5 comments from localities, 19 from advocacy and other

organizations, 5 from employment services, 5 from Members of Congress, and 8 from individuals.

Several commenters felt that the amount of time allowed States to submit their E&T plans is insufficient. The Department plans to allow States two-months to prepare and submit employment and training plans to FNS. The Department distributed $5 million in FY 1985 and $5 million in FY 1986 for States to begin to plan their programs. The Department has also provided two pieces of technical assistance to State agencies offering guidance on how to design and operate employment and training programs for food stamp recipients. In addition to these efforts to assist States in the planning process, this rulemaking also authorizes States to submit interim plans to the Department for the six months of program operation. Given these factors the Department believes a two-month preparation period is adequate. Moreover, the April 1, 1987 implementation date was established by Pub. L. 99–198 and the Department does not have any flexibility to adjust that date.

Definitions

In response to a number of comments received requesting clarification of the terminology used throughout the proposed rulemaking, the Department has added several definitions to this final rulemaking. Most of these definitions will be found in § 271.2 of the regulations. The others will be found within the text of § 273.7.

Applicant—a person or persons who applies in writing for food stamp benefits.

Assessment—an in-depth evaluation of employability skills coupled with counseling on how and where to search for employment. If combined with work experience, some form of employment search or training, an assessment of this nature could constitute part of an approvable employment and training component.

Base of eligibles—E&T mandatory participants (defined below) plus persons who volunteer for E&T participation.

Component—a work experience, work training or job search program, as described in section 6(d)(4)(B) of the Food Stamp Act of 1977 (7 U.S.C. 2014 (d)(4)(B)) designed to help food stamp recipients move promptly into unsubsidized employment.

Employment & training mandatory participant—a Food Stamp Program applicant or participant who is required to work register under 7 U.S.C. 2014(d)(1) or (2) and who the State determines should not be exempted from participation in an employment and training program.

Exempted—this term refers to a work registered person or persons excused by the State, under the conditions in § 273.7(f) from participation in an employment and training program.

Employment and training program—a program operated by each State agency consisting of one or more direct work, work training or job search components.

Newly work registered—food stamp participants work registered at the point of application or those registered for the first time in their current period of participation.

"Placed" in an employment and training program—a State agency may count a person as "placed" in an employment and training program when the individual commences a component or is sent a Notice of Adverse Action (NOAA) or denied certification due to non-compliance with a food stamp employment and training requirement. Persons who refuse to work register or who voluntarily quit a job and are sent a NOAA may not be considered "placed."

Screening—an evaluation by the eligibility worker as to whether a person should or should not be referred for participation in an E&T program. This activity would not be considered an approvable E&T component.

Work registrant—a Food Stamp Program participant subject to the provisions of section (d)(1) of the Food Stamp Act.

Work Registration

The proposed rule contained a provision that work registrants who move out of a project area reregister at their new location within ten days of a move. The purpose of the provision was to preclude a long period during which the work registrant's status is unaccounted for. Commenters objected to the 10 day requirement, contending that it limited State flexibility and was unnecessary. The Department agrees and the final rule eliminates the 10 day requirement. States may utilize their present information systems, if adequate, to register cases and follow existing procedures and timelines for transferring cases.

This rule finalizes the eligibility criteria specified in section 6(d) of the Food Stamp Act of 1977. The Act subjects persons age 16 and older to the work registration requirements. It also exempts from work registration 16 and 17 year olds who are not household heads, or who are attending school or enrolled in an employment and training program at least half-time.

This final rule eliminates the required use of the ES–511 form. This form was mandated through previous regulations at a time when food stamp work requirements were being administered jointly with the Department of Labor (DOL).

State agencies now will be able to record and keep track of work registration status through annotating application forms or worksheets, or by utilizing a method of their own design, as long as the State is able to fulfill the reporting requirements of § 273.7(c)(6).

This rulemaking does not alter the current policy of allowing the person who applies for the household to work register other household members. The October 1, 1986 rule proposed that State agencies provide each household with a statement which describes work registration rights and responsibilities, the consequences of failure to comply, and lists the names of those affected household members. A number of commenters urged that this statement be provided to each work registrant in the household, at the time of application and at recertification, and to the pertinent member whenever a previously exempted or new household member becomes subject to work requirements. This rule adopts the suggestions of the commenters that the form be provided to each work registrant while, also in response to comments, deleting the proposed requirement that the name of each work registrant in the household appear on the form. These requirements should not prove to be a significant burden to States since the statement will be on a standard form. The Department wants to ensure that each person on the Food Stamp Program who is not exempted from the work requirements receives a clear statement of his or her rights and responsibilities.

On commenter pointed out a difference in language between the food stamp regulations and section (6)(d)(2)(A) of the Food Stamp Act which exempts from food stamp work registration persons who are "currently subject to and complying with a work registration requirement under title IV of the Social Security Act . . .". The food stamp regulations at § 273.7(b) provide an exemption for persons "subject to and participating in the WIN program under title IV." The Department has received a number of policy inquiries about exactly what WIN activity will render a food stamp participant exempt from work registration. It is consistent with the language of the Act that the Department consider WIN registration as compliance with a work registration requirement under title IV and through this final relemaking current regulatory

language will be changed to identify WIN registration as an example.

State Agency Responsibilities

This final rule continues to assign to State agencies the responsibility of registering for work each household member not exempted by subsection 6(d)(2) of the Food Stamp Act of 1977, as amended. This activity must continue statewide regardless of whether all geographic areas are included in a State's employment and training program. The State agency will have the responsibility of screening each work registrant in areas which are covered by the State's E & T program to determine which registrants should be referred to an employment and training component.

State Employment and Training Plans

Many State commenters expressed concern about their ability to prepare and submit State plans by March 2 and begin full operations by April 1, 1987. The Department recognizes that this timeframe is a short one and that some of the information called for in the State plan will not be readily available to each State. The Department is planning to distribute to each State a handbook with guidance on how to prepare the plans. However, we recognize that even with technical assistance a number of States will not have the time to decide how to fully operationalize their programs. The Department therefore is asking that 6 month interim plans be submitted by those States which are not able to fully anticipate what their E & T program will look like in its final form. These interim plans will cover the first six months of operation. Interim plans will be evaluated carefully by the Department and must contain justifications for State granted exemptions, and the nature and location of the components the State plans to offer.

The proposed rule called for state E & T plans to be updated and submitted to FNS anjually. It also proposed that States must submit plan revisions to FNS for approval if they intend to alter the nature or location of components or the number or characteristics of persons served. Several commenters suggested that employment and training plans be submitted as frequently as they are for WIN demonstration projects which require updates and revisions only. Regular WIN and food stamp plans of operations are required annually. The Department believes that each state's total E & T program must be viewed as a whole if it is to be adequately monitored. Because of State concerns that it well require a considerable amount of time and money to submit a new plan annually the Department is requiring that plans be submitted biannually. However, because of the newness of the requirements of this rulemaking, and the amount of activity the Department anticipates will take place in the initial year and one half of operation, the Department is requiring that new plans be submitted for FY 1988 and FY 1989. After that, no plan need be submitted until the FY 1991 plan. All plans, with the exception of the initial plan which is due March 2, 1987, shall be submitted 45 days before the start of the appropriate Federal fiscal year.

The requirement that plan revisions be submitted for FNS approval before implementation remains unchanged, despite one comment that States should have the authority to alter their programs quickly and later submit a change request to FNS. The Department does not believe such a system would be workable and believes such a system would violate the Secretary's oversight responsibility. This rule finalizes the provision that a State's receipt of employment and training funds is contingent upon the Secretary's approval of the State's plan.

Employment and Training Plan Contents

A number of comments were received from State agencies which felt the level of detail the Department proposed to include in the State plans was too burdensome. After evaluation, we have eliminated several pieces of information we proposed to collect. Specifically, the requirement for a discussion of the employment and training needs of the State's work registrant population and the expected outcomes of its employment and training program was removed. One commenter said it would be very difficult and cumbersome to have to provide FNS with copies of all State contracts for employment and training services. We agree and have altered the proposed requirement and now ask that the contracts be available for FNS inspection.

This rule requires that plans must include a detailed description of the components the State chooses to operate, and why; the cost of operating the components for one full year including the methodology for State reimbursement for education components; the categories and types of individuals the State plans to exempt from participation and why, including cost information or other justification as to why such exemptions are advisable and the estimated percentage of work registrants the State plans to exempt; the characteristics of the population the State does intend to place; the geographic areas covered and not covered by the plan, and why, and the type and location of the services to be offered; the method the State will use to count all work registrants the first month of each fiscal year; the estimated number of volunteers; the relationship between the State agency and other organizations it plans to coordinate with for services; the organizational relationship between the units responsible for certification and those responsible for operating employment and training components; and the availability of employment and training programs to Indians living on reservations. If a State plans to operate components which are significantly more intensive than the minimum level of effort specified in § 273.7(f), requiring greater staff assistance or more costly equipment or facilities, or if the State plans to concentrate efforts on harder to place recipients, additional cost information and justification for the components should be included to assist FNS in determining whether an adjustment should be made in the State's performance standard.

One State asked that the Department specify what budgetary or cost information to include in the State plan. This guidance will be provided through the technical assistance handbook which will be distributed to States. State agencies are responsible for fulfilling the financial and non-financial reporting requirements specified later in this preamble and at § 273.7 (c)(6) and (d)(3).

Non-financial Reporting Requirements

The Department received many comments about the proposed State agency quarterly reporting requirements. The quantity of information was regarded as too extensive by most commenters. The issues of the cost of redesigning current information or data collection systems as well as the amount of time needed to do so were raised. The Department has made a concerted effort to condense the amount of information required of the States and to limit it to only that information necessary to monitor State activity toward its performance standard. A number of items which appeared in the data collection burden of the proposed rule have been removed in this final rulemaking.

Although the Department still needs to know the number of applicants each State places in a component (presumably job search) we are eliminating the requirement that applicant information be separated by those who were not subsequently work registered, applicants who were found

ineligible for food stamp participation and those who were work registered. The Department is asking for this statistic so that States will receive credit for serving applicants. A number of States commented that they would have difficulty keeping track of the number of persons who complete their first, second or third components. Because this piece of data is not necessary to monitor State performance, the Department has deleted its proposed request for this information. Because this final rule will count all Notices of Adverse Action (NOAA) issued and certifications denied due to noncompliance with work requirements toward a State's performance standard, the two requirements for sanction information found in § 273.7(c)(b) (vii) and (ix) of the proposed rule are deleted and replaced by one requirement that all NOAAs and denied certifications for noncompliance with employment and training requirements be reported, regardless of whether they were imposed before or after E&T activity commenced.

The Department also has deleted the requirement for States to report the number of persons who become ineligible for food stamp benefits due to employment. Many of these items will be gathered during the Congressionally mandated evaluation of the E&T programs. The Department is planning to distribute to State agencies a new and comprehensive employment and training reporting form on which States should report non-financial information.

There are two pieces of information which the Department proposed to collect quarterly but which we are now requiring States to submit on their final annual report only. These data are the number of work registrants who were exempted by the State, separated by reasons for the exemption, and the number of persons placed in each specific E & T component. Although this information will not be used to monitor State performance, the Department views this information as necessary for overall policy evaluation.

This final rulemaking requires that each State submit quarterly reports to FNS no later than 45 days after the end of the quarter, containing the number of persons in the following categories:

1. FSP participants newly work registered;
2. Work registrants the State exempted from participation in employment and training;
3. Food Stamp Program participants who volunteer for and commence participation in an approved component;
4. E & T mandatory participants who actually commence a component including applicants in States which operate a component for applicants; and
5. The number of persons sent a Notice of Adverse Action for failure to comply with E & T requirements of the Food Stamp Program and the number of Food Stamp Program applicants who were denied eligibility for failure to comply with an E & T requirement.

On the first quarterly submission each year, States must report the number of food stamp participants who are work registered as of October of that year. Additional information may be required of individual State agencies on an as needed basis depending on the contents of the State's plan regarding the type of components offered and the characteristics of persons served. Such additional items and the timeframes under which they should be provided will be discussed with the State prior to plan approved by FNS.

Employment and Training Programs

The Department received a considerable number of comments addressing the nature of the employment and training programs which the Department proposed.

There was general support for the change from nationwide job search to the flexibility which could be achieved by State designed employment and training programs. Most of the commenters felt that the programs, as proposed by USDA, did not allow for the degree of flexibility they believe Pub. L. 99–198 provides.

Although most commenters did not suggest that FNS was attempting to dictate the specifics of the components they could choose to operate, a number felt that the Department proposal to provide guidance on the percentage of work registrants States could exempt from E & T participation, coupled with the proposed performance level and capped 100 percent funding, restricted the types of programs the States could initiate and operate. The Department agrees that these factors will influence program design. However, these factors as prescribed in the final rule represent appropriate oversight. In response to the input received, the Department is modifying the proposal in a number of areas.

Components

Each State shall operate at least one employment and training program which shall consist of one or more work experience, work training or job search programs which are defined as components. A State may vary the components offered within the State, or may choose to operate only one component. This rulemaking reflects the intent of Congress to permit each State to design an employment and training program which will best suit its needs. As stated in the preamble of the proposed rule, the Department expects that the employment and training programs will be continually evolving and improving as each State discovers through evaluation, which components are most successful in increasing the ability of food stamp recipients to obtain unsubsidized employment.

The components listed in the October 1, 1986 proposed rule for approval by the Secretary remain unchanged and are specified in this rulemaking. One of the approvable components is, "A job search program comparable to that required for the AFDC program under Part A of Title IV of the Social Security Act." In response to comments, this rulemaking expands on the description of the provisions of AFDC employment search. This rule specifies that the State may require that an individual participate in a job search program from the time an application is filed for an initial period of up to eight consecutive weeks. Following this initial period (which may extend beyond the date when eligiblity is determined) the State may require an additional job search period, not to exceed eight successive weeks (or their equivalent) in any period of 12 consecutive months. The first such period of 12 consecutive months shall begin at any time following the close of the initial period. States must not impose requirements which would delay the determination of an individual's eligibility for aid or in issuing benefits to any household which is otherwise eligible.

At the request of a number of commenters this final rule clarifies that placement of a food stamp recipient in an employment and training program being operated by a State, such as Job Training Partnership Act (JTPA) programs or a state-funded job program, may count as a placement for performance purposes if FNS approves the program as a meaningful component. The Department recognizes that there are work registrants who lack basic skills, such as reading or math, which may present barriers to their employability. Placing these persons in programs to address their needs could constitute an acceptable component and, if appropriate, the person could be counted as placed toward a performance standard. Education components are approvable to the extent that they directly enhance the employability of individual recipients. In reviewing State plans, the Department expects that any proposed education

activities would be designed to specifically address employability barriers of participants identified through individual assessment. This link between education and employment is based on the statute. The Department believes that while long-term, general education may indirectly promote employability, a more direct link between education and job-readiness must be established for a component to be approved. Funding for employment and training programs is limited, and we do not believe that it was the intent of Congress to use this funding to supplant currently operating State and local educational programs but rather, to supplement them, if necessary. When preparing their E&T plans States should clearly document how E&T monies are being distributed into educational components.

A number of commenters recommended that prior to an individual's participation in a specific E&T component the State should provide an explanation of the requirements of the component, the sanctions for noncompliance, and what will constitute noncompliance. The Department concurs that this information should be provided either verbally or in writing and has placed such a requirement in this final rule.

Minimum Level of Effort of Components

The October 1, 1986 rule proposed that for a component to be acceptable to FNS it should entail an average of 12 hours of activity per month per participant for two months. A number of comments were received opposing what commenters perceived to be a rigid minimum number of hours. This was not the intent of the Department.

The Department stated in the preamble of the proposed rule that because there will be so many variations in the nature of the components offered, it would be unrealistic to insist on a specific minimum level of effort for each participant. In an effort to provide guidance to State agencies in designing their employment and training components the Department offers a level of effort comparable to 12 hours per month per participant for two months as the type of effort we would like to see States use as a minimum. That is not to say that the Department will not consider and approve components which entail less time than this, if States can demonstrate in their plans that such components are meaningful. We recognize that the quality of a component cannot be determined by the number of hours a participant spends engaged in the activity.

Exemptions from Employment and Training Programs

The proposed regulations provided for different standards of justification for States to exempt work registrants or categories of work registrants from E&T depending on whether the exemptions proposed in the State plan exceeded 20 percent of its work registrants. The proposal required compelling justification for exemptions in excess of this benchmark, and the preamble indicated that States should not expect to be permitted to exempt more than this proportion. This proposal was opposed by 48 commenters who asserted that this limitation curtailed State flexibility in programs design and preferred exemptions to be evaluated on a case-by-case basis in the State plan approval process. In particular, commenters challenged the validity of the 20 percent benchmark because it was based on national data from job search programs which may not reflect current work registrant characteristics in individual States. Others argued that a national standard was inconsistent with the legislative intent to allow program design to be tailored as closely as possible to conditions in each State. The Department has reevaluated this issue and is deleting the 20 percent standard from the final rule. Types of exemptions will be considered on a case by case basis during the review and approval of each State plan for its employment and training program. All proposed exemptions will be evaluated in the same manner within the context of the overall plan.

While the Department intends that this change will allow for greater responsiveness to specific State circumstances, it remains committed to the statutory provision that exemptions are to be based on impracticability.

The law indicates several factors which may lead to the impracticability of providing an employment and training program in some geographic areas, to some groups of recipients, or to some individuals. These factors include availability of job opportunities, lack of job readiness and employability, the remote location of work opportunities, and unavailability of child care. On the other hand, the Act also refers to the need to evaluate the validity of exemptions. Moreover, the relevant legislative history indicates that exemptions must be rational and are not to result in shrinking the scope of the employment and training program to the point where it loses meaningfulness.

Therefore, in justifying proposed exemptions using these or other factors, States must show why implementing an employment and training program for areas and persons proposed for exemption is impracticable. Lack of State funds is not acceptable as a criterion of impracticability for exemption purposes.

In designing their E&T programs and proposing exemptions, States should review recent evidence that it is possible to effectively serve larger proportions of the work registrant population that has been our past national experience. The Department's job search and workfare demonstrations indicate that work programs are practical and effective under varying economic circumstances and for people with and without work experience. Moreover, employment and training programs can be designed to operate well in rural areas and to operate within the needs of those without automobiles or after-school child care.

Although situations may vary across the country, it appears that previously observed levels of exemptions and previously observed levels of implementation do not justify low service levels. The new law provides flexibility to design services in such a way as to make them appropriate for larger proportions of recipients.

Requests for all types of exemptions must be justified in State plans. The proposal specified and this rule retains the provisions that individual exemptions shall be evaluated at each recertification, and that exemptions granted to categories of work registrants undergo serious reconsideration by the State agency annually to ensure that the reason for the exemption is still valid. One commenter suggested that States be allowed to review exemptions for validity more frequently than at each certification. The Department has no objections to more frequent reevaluations of exemptions, either categorical or individual.

A number of commenters asked that the Department take into account changes in a State's economy when determining whether a State has complied with its exemption limit. Language has been added to this rule to take account of changes in a State's economy in either of two potential ways. If a State recognizes that because of changes in its caseload its approved exemption criteria are too low, it can either seek to amend its State plan, during the year, or show that it had good cause for not meeting its established performance standard at the end of the year.

The Department also received comments saying that the percentage of exemptions granted to a State should not affect the State's performance standards. The Department will view the exemption level it approves and the performance level it assigns separately and has removed the language which appeared in the proposed rule which said that exemptions granted could affect the performance standard.

Hours of Participation

A number of commenters took exception with the Department's interpretation of the provisions of section 6(d)(4)(F) of the Food Stamp Act which pertain to the hours of work and participation which may be required in an employment and training program. The commenters contended that an intentional distinction is drawn in the Act between the number of hours of work which may be required of a household and the hours of participation in the employment and training program which can be required of a household member.

Section 6(f)(4)(F)(i) provides that the total hours of *work* in an employment and training program . . . required of members of a household together with the hours of *work* of such members in any program carried out under section 20 (food stamp workfare) in any month collectively may not exceed a number of hours equal to the household's allotment for a month divided by the higher of the applicable State minimum wage or Federal minimum wage. Section 6(d)(4)(F)(ii) limits the total hours of *participation* in an employment and training program by any member of a household, in any month, together with any hours worked in another program carried out under section 20 and any hours worked for compensation to 120 hours per month.

The proposed rule applied the hourly limit of section 6(d)(4)(F)(i) to all participation in employment and training programs. We now believe this was a misinterpretation of the Act and have changed our interpretation through this final rulemaking. This rule specifies that E&T mandatory participants may be required to participate in employment and training programs for up to 120 hours per month regardless of allotment size, with the exception that household participation in work programs, including but not limited to those specified in § 273.7(f)(1) (iii), and (iv) cannot exceed the number of hours obtained by dividing the household's benefit level by the minimum wage. The decision of whether a component is a work component shall be made by the Secretary in the plan approval process. State agency recommendations will be considered at that time.

The Department regards this interpretation as a positive step toward meaningful programs and greater State flexibility. Several State commenters expressed concern that limiting the hours of employment and training participation to a ratio of the household's benefit level to the minimum wage would severely restrict the type of components they could offer. One State pointed out that it would be necessary to notify contract providers of allotment changes month to month so they could vary participation requirements accordingly. The Department's reinterpretation will eliminate this concern.

Voluntary Participation

A large number of commenters who addressed the participation of volunteers in E&T programs expressed their belief that it is important to serve volunteers and that providing E&T services to certain volunteers will prove to be more cost effective than serving other persons who are work registered. As stated in the preamble to the proposed rule, research suggests that it can be effective to serve persons who are exempt from work registration because they have children under the age of six. Many commenters contended that counting volunteers in the base of eligibles when determining a State performance level, makes it harder for States to meet their established standards and would create a disincentive to serving such persons. This issue is addressed later in this preamble in the discussion of performance standards.

Several commenters asked that the Department clarify the status of volunteers in an E&T program. Volunteers must be food stamp recipients, but they are not subject to sanction for noncompliance with E&T requirements. State agencies may decide which volunteers to serve. If, as one commenter mentioned, a particular volunteer continually refuses, after commencing a component, to fulfill the requirements of the component, it is the State's decision whether to offer continued E&T services to that individual. One commenter inquired about the number of hours of participation a person may volunteer for. The final rule provides that the same limitations on the number of hours of participation or work in an employment and training program that apply to E&T mandatory participants apply to volunteers. We believe that Congress did not intend to draw distinction between the types of E&T participants when it established maximum hour restrictions. Moreover, limiting the number of hours of participation in E&T programs by volunteers (as well as mandatory participants) allows time for independent efforts by such persons to seek non-subsidized employment.

Employment and Training Program Funding

Numerous State agencies stated that the Federal funding available would be insufficient to operate expanded employment and training programs and that State agencies will be required to invest their own funds in order to meet the performance standards proposed in the regulations. The legislation caps the amounts to be made available to States without any matching requirements at $40 million in Fiscal Year 1986, $50 million in Fiscal Year 1987, $60 million in Fiscal Year 1988 and $75 million in Fiscal Years 1989 and 1990. It also provides that the Department will match 50 percent of any costs incurred by a State above its grant level. There are no dollar limits to the amount of matching funds that will be available to State agencies. We expect that it will be necessary for many State agencies to spend more than their unmatched Federal grant to operate employment and training programs that satisfy the performance standards that will take effect in Fiscal Year 1989. Congressional budgetary estimates for the employment and training programs at the time of enactment recognized that the unmatched Federal grant would not be adequate to fund these programs. We consider administration of employment and training requirements an integral State responsibility in operating the Food Stamp Program and thus believe that it is reasonable to expect State agencies to assume some portion of the costs of these programs. The proposed regulation stated that, for the second half of Fiscal Year 1987 and for Fiscal Year 1988, funds appropriated for unmatched employment and training grants would be allocated on the basis of the estimated number of work registrants in each State as a percentage of the number of work registrants nationwide, based on the most recently available, reliable information. The preamble stated that the Department intended to use Integrated Quality Control System (IQCS) data on work registrants in conjunction with Food Stamp Program participation numbers to distribute funds for the second half of Fiscal Year 1987 and Fiscal Year 1988.

A number of commenters expressed opposition to this proposed method of allocation. They stated that the IQCS

system could not provide sufficiently reliable information on work registrant status and that its use would result in an inequitable distribution of funds among States. The commenters contended that some States universally registered participants beyond those required by law, while others failed to enter work registrant status codes into the IQCS form accurately since that data element was unnecessary for either the determination of an error rate or any State management information purpose. Several commenters suggested that the allocation methodology look instead at Food Stamp Program participation data, stating that this would be a more uniformly reported data base and that it would better recognize that States may choose to serve volunteers under their employment and training programs. Other commenters believed that the funding formula should guarantee a minimum grant level, regardless of the size of a State's caseload. Several proposed that the funding method provide that States currently operating job search programs be provided at least the same level of funding that they now receive. Several stated that the funding formula should give emphasis to successful outcomes, in terms of placement in employment. Still other commenters believed that the formula should provide for consideration of labor market factors and be periodically adjusted for downturns in State economic circumstances.

The final regulations will distribute the funding appropriated for umatched employment and training grants on the basis of Food Stamp Program participation in each State as a percentage of total nationwide participation. The Department will use average monthly participation for the most recent Fiscal Year for which complete data has been reported to allocate the employment and training program grants. Thus, for the second half of Fiscal Year 1987, participation figures for Fiscal Year 1985 will be used; for Fiscal Year 1988, participation figures for Fiscal Year 1986 will be used, and so forth. Although this method does not incorporate all suggestions offered by commenters, it will provide for a distribution of funds based on a source of data that is uniformly reported and related to potential food stamp employment and training program participants. While the IQCS data on State agency error rates is accurate, we could not ignore State arguments that work registrant status is inconsistently coded and that IQCS work registrant information is not reliable enough to use to allocate employment and training grants. Likewise, there is no other sufficiently reliable data base on work registrants currently available for use. We considered using as an approximate measure of work registrants the number of individuals between 18 and 59 years of age in each State, as coded in IQCS data. However, this option made little difference when compared to participation and was not selected because of the expressed concerns about the accuracy of coding nonfinancial information in the IQCS data base.

The Department acknowledges that the method contained in this final rule will result in less funding compared to current contract levels for some States which are currently operating job search programs. However, given the limits on the amount of unmatched funding that are authorized in the legislation, we did not feel that continuing to guarantee the same levels of funding would be an equitable approach, since it would reduce the total amount of funding available to all other States under the allocation formula. We chose not to guarantee minimum grant levels because there was no compelling evidence offered on what minimum level would be necessary to establish and operate an employment and training program.

Also, part of the stated need for minimum grants was to establish the detailed non-financial reporting system set forth in the proposed regulations. The reduced reporting requirements contained in this final rule should alleviate some of the anticipated cost increases associated with employment and training program implementation. We acknowledge that this method of allocation does not reflect the most recent economic conditions. However, we believe it to be of overriding concern that the method chosen allows States to know in advance the level of their employment and training grants for planning purposes and rely on actual, uniformly reported data rather than on estimates of changes in economic conditions. This method fulfills those criteria.

The proposed regulation stated that the Department would adjust the basic allocation formula for Fiscal Year 1989 and following fiscal years to take into account variations in program designs, characteristics of work registrants served, substantial amounts of unused funds in a previous fiscal year, program effectiveness or other factors determined necessary to effectively administer the program. The preamble to the proposed rule also spoke of the Department's intention to move as quickly as practicable to a funding allocation formula that rewards exemplary State performance, using information gathered in the first year and a half of program operations. There were numerous adverse comments on the regulatory language in the belief that it provided the Secretary with the ability to modify the funding allocation formula without publishing proposed regulations to enable State agencies and other interested parties to review and comment on the changes to the formula. It is the Department's firm intention to distribute $15 million of the total amount of employment and training grants in Fiscal Year 1989 based on State performance in Fiscal Year 1988. However, the Department will publish proposed and final regulations before making changes to the allocation formula contained in this final regulation to do so. In preparing the proposed rule, the Department will review suggestions offered by commenters to the proposed employment and training rule on how to use performance in allocating the grants. The Department however reserves the right to redistribute some portion of employment and training grants after the beginning of a fiscal year to reflect funds that are unlikely to be used during the fiscal year by one State and which could be used by another State or States, but such an adjustment would only be made with the concurrence of the States involved.

Several commenters requested that the final rule provide more detail on acceptable administrative costs. The regulations have been changed slightly to state that employment and training grants shall be used for any reasonable cost of administering employment and training requirements, including costs of planning, but that administrative funding shall not be available to subsidize a participant's wages. Also in response to comments, we have added a clarification about when the certification process is considered to end and employment and training activities eligible for unmatched employment and training funding are considered to begin, as well as a clarification that sanction activities undertaken after the agency operating an employment and training component informs the State agency of a participant's noncompliance are not eligible to be funded through the unmatched employment and training grant. Other commenters requested clarification on whether workfare programs, under section 20 of the Act, would be funded by the Federal government at the regular 50 percent match or with unmatched Federal

grants. If a workfare program is included as part of a State's employment and training plan, it may be funded with the unmatched Federal grant or be 50 percent Federally-funded; the State should indicate the funding level at which it chooses to operate such workfare programs in its State plan. If a political subdivision of a State wishes to operate workfare outside the State plan, those workfare costs will be reimbursed at the standard 50 percent. However, only if workfare programs are being funded at the standard 50 percent rate may an enhanced workfare reimbursement be claimed when participants obtain employment during or 30 days after their first participation in the workfare program. Section 20(g)(2)(A) of the Food Stamp Act clearly limits enhanced workfare reimbursements to that half of workfare administrative costs that has not been reimbursed by the Federal government under standard 50 percent cost-sharing. Operators of workfare programs cannot receive through enhanced reimbursements more than the actual costs of operating workfare programs. Thus, in workfare programs funded with the unmatched Federal grant, enhanced reimbursements will not be provided.

A number of commenters asked the Department to be more specific in describing what costs will be reviewed in State plans. The final regulations have been revised to require States to justify any charges for education components and the methodology for deriving these charges. Current regulations at part 277 establish guidelines for the allowability of any costs charged under the Food Stamp Program. Costs must be necessary, reasonable, and properly allocated. While the allowability of all expenses will be reviewed, the Department will be particularly vigilant in scrutinizing any proposed education expenses to ensure that approved costs meet these guidelines and do not allow E & T funds to subsidize other activities.

The Department is highly concerned that Federal financial support for State activities be limited to components which represent new efforts to enhance the employability of food stamp participants, rather than supplant present State funding for existing activities. Any State agency which will request 50 percent federal reimbursement for state E & T administrative costs, other than those for participant reimbursement, shall include in its Employment and Training Plan of Operations, or in an amendment to it's plan, an itemized list of all activities and costs for which those federal funds will be claimed. Costs in excess of the federal grant shall be allowed only with the prior approval of the Department and must be adequately documented to assure that they are necessary, reasonable and properly allocated. This requirement will be removed once a future rulemaking has been promulgated clarifying the allowability of such costs.

A number of commenters noted that the discussion of participant reimbursements under § 273.7(d)(1)(ii) of the regulations was unclear and possibly incorrect in relation to the statute. That section has been revised to clarify that State agencies shall reimburse participants for actual costs of participating up to $25 per participant per month. The Federal government will match half of the cost of participant reimbursements up to $25, for a maximum of $12.50 in Federal reimbursement per participant per month. Several commenters noted that $25 per participant was insufficient to cover participant expenses. The legislation restricts Federal cost-sharing to this level. State agencies may reimburse participants for costs above $25 but any additional costs are not matchable.

There was a question about whether reimbursements can be provided out of the unmatched Federal grant. The legislation states that reimbursements are not to be made out of funds allocated from the Federal grants. 7 U.S.C. 2025(h)(3). Another commenter stated that the regulation was unclear in its restriction on participants claiming reimbursed child care costs when the Food Stamp Program's dependent care deduction is calculated. A clarification has been made to state that only the portion of child care expenses that has been reimbursed under the employment and training program cannot be claimed toward the dependent care deduction; costs that have not been reimbursed can be deducted.

Several commenters requested that State agencies be permitted to provide allowances to participants up to the maximum level allowed without having to document and match actual participant expenditures. They stated that providing an allowance would be administratively more feasible and more responsive to client needs, since the allowance could be provided in advance of the expense. We have modified the final rule to give State agencies the option of developing a method to provide allowance to participants in lieu of reimbursing actual expenses. The method must result in allowances that will reasonably reflect probable expenditures, up to the limit established by the State. State agencies will be required to offer participants the option of receiving a reimbursement of actual costs if they exceeded the allowance, up to the limit established by the State. The methodology States propose for providing allowances should be included in the State plan. In no case, however, will the Federal government match costs above 50 percent of reimbursement or allowance paid up to the maximum of $12.50 per participant per month as prescribed by law.

Some questions arose on procedures for accounting for employment and training program funds, in particular whether expenditures funded with the unmatched Federal grants and those funded at the 50 percent reimbursement level must be reported separately. The proposed regulation required that State agencies report on the SF–269 form the total amount of employment and training expenditures; and provide further details in an attachment to the form on total expenditures, expenditures funded from the unmatched Federal grant; expenditures for participant reimbursements; expenditures for other employment and training costs at the 50 percent reimbursement level; and expenditures for optional workforce programs funded at the 50 percent reimbursement level. The costs must be reported separately, in order for proper reimbursements to be made to the State agencies, and the final rule does not change the requirement for separating the expenditures in an attachment to the SF–269. Further instructions on the attachment will be provided.

Failure to Comply

The Agency received a number of comments about § 273.7(g), Failure to Comply. The most frequently mentioned concerns were the inconsistency in the length of sanctions provided by the AFDC and Food Stamp Programs, and the fact that the AFDC Program does not allow a cure once a household is sanctioned for noncompliance and the Food Stamp Program does. Both of these issues result from differences in the Social Security Act and the Food Stamp Act. The Department of Health and Human Services and USDA will explore legislative changes to achieve consistency in this area.

Several commenters asked that the requirements for Notices of Adverse Action, under § 273.7(g)(1) be made more explicit than those in the proposed rule. As proposed, a Notice of Adverse Action would contain the proposed period of disqualification, a statement of when the individual or household could

reapply for benefits, and a statement of the procedures to follow to reestablish eligibility. The commenters asked that each Notice identify the act of noncompliance committed and the particular action that must be taken to "cure" the noncompliance and end or avoid a sanction. This requirement has been added to the regulatory language in this final rule.

Another primary focus of comments in this area was the Department's proposal to define head of household as the primary wage earner in the household who is also subject to work registration. A number of commenters objected to the proposed definition. Several felt that the definition limited State flexibility. Others thought it violated Congressional intent. It was pointed out that including 16 and 17 year old work registrants increased the chances for a household's noncompliance and that an entire household should not be penalized if an unruly 16 year old refused to comply with program requirements.

The Department has interpreted the term "head of household" to mean the "primary wage earner over the age of 18" since 1979 in determining which household member would subject the entire household to a sanction if he/she voluntarily quit a job of 20 hours a week or more without good cause. The Department has redefined "head of household" and this rulemaking uses the term head of household, rather than primary wage earner throughout § 273.7, including paragraph (n) which pertains to voluntary quit. Head of household in this final rulemaking will be defined in § 273.1(d) as the person in the household who is the principal source of earned income in the 2 months prior to the month of the violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours. However, no person of any age living with a parent or person fulfilling the role of a parent who is employed (at least 30 hours per week) or work registered under food stamps, AFDC, or Unemployment Compensation can be considered the head of household. If there is no principal source of earned income in the household, the household may designate a head of household. This definition is more closely aligned with the traditional view of what person constitutes the head of the household.

The Department is continuing to focus its interpretation of head of household on the individual who provides the most earned income to the household, with the new exceptions noted above, because in most instances this is the only way to effectuate the primary congressional purpose behind the sanctions for work related violations, i.e., to discourage the practice of obtaining or increasing food stamp benefits by voluntarily foregoing income. In most instances this purpose would be thwarted if the economic heads of households were not the focus of the sanction. The exceptions provided in this rule are to take into account the special circumstances and concerns expressed by the commenters.

This rule finalizes in regulation the statutory provision that a sanction for noncompliance with food stamp work requirements shall apply to the individual who commits the violation rather than the entire household, unless the individual committing the violation is the head of the household, is physically and mentally fit and between the ages of sixteen and sixty. In such a case, the entire household will be sanctioned. This rule also finalizes the provision in Pub. L. 99–198 that if the person who committed a work requirement violation leaves the household that household may reestablish eligibility but any new household that person joins as head of household is ineligible for the balance of the individual's disqualification period. 7 U.S.C. 2015(d)(1). In response to comments seeking further guidance on the procedure to be followed if a disqualified household splits up, we are specifying that if any household member disqualified for non-compliance with food stamp work requirements joins a new household and is not the head of that household, that person shall be treated as an ineligible household member as described in § 273.1(b)(2). The rule also incorporates the statutory provision that eligibility may be reestablished if the household member who committed the violation complies with the requirement that has been violated. *Id.*

Several commenters pointed out that some of the appeals procedures contained in regulation were eliminated in the October 1, 1986 proposed rule. These procedures, which assure food stamp recipients basic due process rights during a fair hearing process were inadvertently omitted from the proposal and are included in this final rulemaking. The requirements are: (1) The agency running the employment and training component should have a representative available for the hearing, either in person or by phone, when the sanction is based on a report of noncompliance by that agency; (2) the household involved should be allowed to examine its casefile maintained by the agency running the component a reasonable time before the date of the fair hearing, except for confidential information that the employment and training agency determines should be protected from release, and (3) information not released to a household may not be used at the fair hearing.

The Department is retaining the provision in the proposed rule that would require State agencies to provide the noncomplying household or individual with a notice of adverse action no later than 10 days after determining noncompliance without good cause. This issue did not receive any comment. The Department believes it is crucial that State agencies act promptly to discover noncompliance and to initiate sanction action once the noncompliance has been established.

Voluntary Quit

A large number of comments addressed the voluntary quit provisions proposed in the October 1, 1986 rulemaking. The majority of those provisions were proposed to clarify or expand upon existing FNS policy. Because of the need for expediency in publishing this final rulemaking, we have decided not to address voluntary quit changes on which the Department has discretion, but only those mandated by the amendments made by Pub. L. 99–198. As mandated by the Act, this rulemaking provides that food stamp eligibility may be reestablished during a disqualification for voluntary quit if the members who caused the disqualification (the household head) secures new employment comparable in salary or hours to the job which was quit, or if that individual leaves the household or becomes exempt from work registration through reasons other than those in § 273.7(b)(1)(iii), or (b)(1)(v). As noted above, if the head of household who caused the disqualification joins another household as head of that household, the new household shall be ineligible for Food Stamp Program participation for the remainder of the disqualification period.

Performance Standards

The Department received numerous and extensive comments concerning the level of Federal prescription centering on the proposed performance standards. The Department has carefully assessed these comments in the context of striking a balance between State flexibility and the Federal responsibility to ensure meaningful work programs in all States, and is revising the

performance standards to address these concerns.

The comments focused on three major themes. First, 43 commenters argued that the imposition of performance standards should be delayed until October 1988 in order to allow States time for program implementation and to allow a review of program data. Second, 31 commenters asserted that the performance standards were too strict and could not be achieved because of the narrow definition of participation and the broad definition of the base. Third, 18 commenters argued that the standards would force States to design inexpensive, superficial components for large numbers of participants, thereby curtailing their ability to offer more intensive services to recipients with more severe barriers to employment.

The first issue is the appropriate time for implementing performance standards. A number of commenters believed that a delay until October 1988 would allow the Department to use program results to have a more informed basis for the establishment of standards. The Department proposed to begin phasing in performance standards beginning in October 1987 (after six months of program operations) based on its belief that standards would accelerate State efforts to implement meaningful work programs. This belief has not changed. The establishment of strong employment and training programs for food stamp recipients is an important goal of the Department. However, we recognize that implementing the standards with a relatively short lead time could prove counterproductive in terms of encouraging States to develop the most effective E & T programs. As a demonstration of the Department's sincere interest in the formulation and implementation of substantial employment and training programs, this final rulemaking uses the authority provided in the law (7 U.S.C. 2015(d)(4)(J)(iv)) Pub. L. 99–198 and implements performance standards beginning October 1, 1988. However, as a means of ensuring that States progressively improve E & T program coverage during FY 1988 we are requiring that States achieve a 35 percent placement rate in the first quarter of FY 1989. So that States will not be penalized twice for poor performance in the first quarter of that year, there will be two separate sanction periods for FY 1989, one for the first three months, and one for the subsequent nine months. State performance for both of these periods will be evaluated through the methods described in this rulemaking.

On the second issue, many commenters argued that States could not comply with the standards proposed for Fiscal Year 1988. The Department is delaying these standards until Fiscal Year 1989 and making changes in how they are computed. These specific revisions will be explained in the following discussion of other comments.

Percentage of Persons To Be Placed

Numerous commenters argued that the performance standards contained in the interim rule were arbitrary and unobtainable. Commenters said that the performance standards of 35 percent and 50 percent service levels for FY 88 and FY 89 were too high, in part because the regulation did not give States credit for services to persons who left the Food Stamp Program too quickly to either begin a component or be sanctioned. In evaluating these comments the Department has concluded that, indeed, there should be some adjustment to the required minimum service levels. The Department has taken into account considerations offered by States that should be part of setting and measuring performance standards. Rather than altering the actual numerical standards, the Department has adjusted the base of eligibles, made changes in what counts as a placement, and delayed implementation of performance standards until October 1, 1988. The changes in this rule address the problems identified by the States and the resulting levels of service are comparable to the implementation levels observed in demonstration projects. Given the changes in defining the base and the count of placements, the 35 and 50 percent performance levels required for FY 89 and FY 90 are appropriate and achievable.

A number of commenters argued that the base prescribed in the program regulations as overly broad. Specific concerns included limits on exemptions, the prevalence of short-term food stamp recipients, inclusion of volunteers in the base of eligibles, and the number of persons who were served in one fiscal year but counted in the base the following year. We believe the Department's removal of the requirement for additional justification for State exemptions greater than 20 percent will provide additional flexibility to States. Removal of this guideline was discussed earlier in this preamble.

Short-term Participants

Several commenters expressed concern about the difficulty in serving short-term participants who leave the Food Stamp Program before they can be enrolled in a work program. The commenters argued that the presence of such transient participants in the base exaggerates the size of the population that the State can be reasonably expected to serve. The Act, as amended, recognizes this problem and provides the Secretary authority to permit States to exempt members of households which have participated in the Food Stamp Program for 30 days or less. 7 U.S.C. 2015(d)(4)(D)(i). The Department agrees that an allowance should be made for persons with the briefest participation spells and has revised the regulations to offer States a choice of two methods of dealing with this situation.

With the first method, States will be permitted to exempt persons who participate in the program for 30 days or less from the date of application. This exemption would include all work registrants whose households receive benefits for 30 days or less. A State could measure this exemption either by exempting those households which receive only one allotment (including a prorated allotment) or by counting a household's actual number of days of participation. The Department has two reservations about these exemptions. First, tracking the exemptions will necessitate linking the work registration data base to household participation to verify when someone leaves the Food Stamp Program. This tracking may be cumbersome and raise administrative costs. Second, a policy of waiting to see which work registrants leave the Food Stamp Program may delay services to all recipients and lessen a State's ability to deal effectively with more long term participants. Two models in the Department's Work Registration and Job Search Demonstration Project indicate that work programs which provide services close to the beginning of program participation show attractive cost-benefit relationships.

Accordingly, the Department is offering States an alternative method of adjusting for very short-term participants. State which do not attempt work registrants who leave the Food Stamp Program within 30 days of their application will be allowed to adjust their base at the end of the year to reflect the problems of dealing with these persons. A standard adjustment of 10 percent may be used to reduce the base of eligibles without supporting documentation. This 10 percent proportion is based on a study performed by the Urban Institute for the Department entitled, "Effects of Legislative Changes in 1981 and 1982 on

the Food Stamp Program". If a State elects to use the adjustment factor it may not also exempt from employment and training programs work registrants who are in the program for 30 days or less from the time of their application. Such States may however attempt to place these persons in an E & T program, and may count such placements toward their performance standard. This is a method of recognizing that some E & T mandatory participants are difficult to serve and should be deducted from the State's base when compliance with a performance standard is assessed. For example, a State with 100 employment and training mandatory participants could attempt to serve any or all of these 100 persons. However, when the base of eligibles is computed for the purpose of measuring compliance with a standard, it will be automatically reduced to 90. This adjustment will not require maintaining individual records. Alternatively, a State which maintains an actual count of persons who left in their first 30 days or less could use the actual proportion of those participants in lieu of the standard adjustment. A State which elects to exempt work registrants who participate for less than 30 days may not require those persons to participate in an E & T program and must maintain individual records.

Treatment of Volunteers Toward Performance Standards

The treatment of volunteers was mentioned by many commenters. The proposed regulations would count volunteers who enter a component in the numerator and the denominator (base) when measuring compliance with performance standards. Commenters objected to including volunteers in the base. Many believed that the statute only intends that the base include work registrants. They objected to counting any volunteers in the base. Another interpretation of the Act can be made. The Act states, "The Secretary shall consider cost to the States in setting performance standards and the degree of participation in programs under this paragraph by exempt persons." This could be interpreted to mean that all volunteers should be counted in the base of eligibles, whether or not they were ever placed in a component. The Department through its proposed rule and this final rule, will count only those volunteers placed in an E & T component in the States' base of eligibles. Participation by a volunteer would never inflate the base, but would, instead help toward achievement of the performance standard. The statute requires the Department to base the performance standards on the number of nonexempt work registrants (E & T mandatory participants). Both this final rulemaking and the proposed rule follow this requirement. For example, if there were 1,000 nonexempt work registrants and a 50 percent performance standard, the proposal called for 500 placements of nonexempt work registrants. However, in considering whether or not this placement goal was achieved, services to volunteers would be considered by reducing the number of E & T mandatory participants work registrant placements. In the previous example, if 100 volunteers were served, the State could lower its work registrant placements to 450 and comply with the 50 percent performance standard. Volunteers are not considered in setting the standard. They are considered in determining compliance with the standard. The Department believes that this approach fully comports with the law.

The more prevalent concern of the commenters about the method for considering volunteers was a perceived adverse impact on State incentives to serve this group. The Food Stamp Act specifically identifies a category of persons—work registrants—who are subject to various work requirements. The Department believes that these persons have been so identified because of higher public expectations that they should seek employment, and the lack of other work programs to serve them. The Department agrees that many people who are not work registered could benefit from an employment and training program, however, States should not have the same incentive to serve persons who the law exempts from work requirements as persons who are subject to these requirements. The Department notes that the proposed treatment of volunteers offers States a positive incentive to serve volunteers. In no case would the placement of volunteers hurt a State in its efforts to meet a performance standard. If the Department adopted the position of the commenters, and did not count volunteers in the base of eligibles, the performance standard for mandatory participants would be reduced on a one to one basic for each volunteer served. However, the Department believes that in assessing State performance, the universe of work registrants defined by law—able-bodied persons without substantial caretaker responsibilities who are not served by work programs offered by other assistance programs—should receive priority. Consequently, the Department is retaining the provisions of the proposed rule in this area.

Counting E&T Mandatory Participants from Prior Year

Several commenters noted that the proposed method of counting the base of eligibles would include work registrants who were served in the prior fiscal year who may leave the Food Stamp Program early in the current year or may not be appropriate candidates for service in the current year. The Department believes that counting each E&T mandatory participant at the beginning of each fiscal year provides an accurate measure of the number of participants the State may attempt to serve over the course of the year. Not counting persons whose participation spans two fiscal years would artificially deflate the number of persons the State could provide services to. The counting of all mandatory E&T participants is included in this final rule as part of the performance measure system.

Placements

A number of commenters expressed concern about the definition of placement used to determine the numerator of the performance standard. The October 1, 1986 rule proposed that States may consider a person "placed" for performance standards purposes, if the person either commenced an E & T component or did not commence the component after being assigned to participate, and was sanctioned by the State agency. The proposed regulations would not have credited a State agency for beginning the disqualification process. A number of commenters noted that many persons leave the Food Stamp Program after receiving a Notice of Adverse Action (NOAA) for noncompliance with work program requirements but before a sanction can be implemented. Several commenters noted that people who receive a NOAA may delcine to seek recertification because the notice is pending. Several others argued that there should be no distinction between sanctions for failing to start a work component and sanctions for noncompliance after a person has begun a program. Other commenters asserted that the proposed definition of placement would be too complex and cumbersome to measure. The Department shares these concerns, and has simplified and expanded the definition of placement in this final rule.

The final regulations include all NOAAs issued for violating the requirements of an employment and training program in the definition of placement. A person may be considered placed if he/she is not certified or recertified because of failure to comply

with an E & T responsibility. The intent is to recognize the efforts of States to initiate the sanction process and to avoid the expense of tracking the outcomes of all notices.

There are other program oversight procedures which will examine how States handle notices of adverse action. The management evaluation and quality control systems will review the outcomes of these notices with regard to program standards for timely action and due process. Only notices of adverse action for violating the rules of an employment and training program may count as a placement. Notices for voluntary quit shall not count as placements, nor shall notices for failure to comply with work registration provisions.

Several commenters argued that the definition of placement should not reflect State actions to disqualify persons who do not abide by program rules because these actions do not advance the goals of an employment and training program. The main purpose of the program is to assist the large majority of participants who willingly cooperate with endeavors aimed at increasing their ability to support themselves through employment. Another reason why the Department is counting disqualifications is because we believe that the measurement of State performance should acknowledge the administrative efforts of States to deal effectively with each E & T participant.

Several commenters requested that the definition of placement be expanded to include any person who finds employment. The commenters maintained that this revision would be consistent with the goals of the program and would reflect the administrative difficulty of serving persons who find jobs quickly. This suggestion was not incorporated in the final rule. The statute authorizes the Department to establish performance standards only for participation in an E & T program.

Outcomes such as employment will be considered in measuring compliance with the standards, but cannot be included in the standard. As for persons who find jobs prior to entering a component, the final regulation allows the base (denominator) to be reduced to reflect problems in serving short-term participants.

Levels of Performance Standards

Many commenters objected to the levels of the performance standards because they believed that these levels conflict with the legislative intent of State flexibility. While the Department has delayed implementation and modified the manner in which the performance standards are calculated, it is not revising the levels specified in the proposed rule. The Department believes that Congress intended that the enactment of Pub. L. 99–198 would result in substantially larger employment and training programs serving greater numbers of participants than had been reached under job search contracts. The performance standards in this final rule reflect this intent. When Congress authorized the Department to set a performance standard at the 50 precent level, it was well aware that the Department had consistently advocated broad-based work programs and intended to require that services be provided to substantial numbers of persons.

Variations in Performance Standards

This final rulemaking provides a mechanism for States to negotiate a performance standard lower than that established nationwide if the State can show that the intensity of the job components it plans to offer or the type of participant it plans to serve will require a greater level of effort by the State than that provided for in § 273.7(o)(5).

The Department received several comments on the proposal to limit the downward adjustment of a performance standard to no more than 40 percent of the nationwide performance standard. For example, if a nationwide performance standard is 35 percent, the guideline minimum is 14 percent. For a 50 percent standard the guideline minimum is 20 percent. Those who commented objected to any minimum standard being set and perceived such a minimum to be contrary to Congressional intent.

The Department contends that it is impracticable not to have any minimum at all. If no minimum were set, neither the Department nor the States would have any guidance on what will constitute an acceptable level of performance by a State. The Department believes that a reduction to 40 percent of the nationwide standard is adequate. No State, through the comment process, provided the Department with an example of the type of program it would like to operate but which would be thwarted by the minimum proposed level.

The proposal that States serve no less than 40 percent of the nationwide standard remains in this rulemaking as a guideline. If States can show the Department that the services they plan to offer are meaningful and substantial, yet necessitate a lower standard, the Department will evaluate such requests on a State by State basis.

Several commenters urged that no major adjustments to the nationwide formula for determining performance standards be made outside of the rulemaking process. The Department agrees that the rulemaking process is the appropriate forum for input on such changes and will publish proposed and final regulations if it becomes necessary.

State Agency Noncompliance

The October 1, 1986 rulemaking proposed that the Secretary withhold State administrative funds proportional to the percentage below its performance standard a State's performance falls. The Agency received a number of comments objecting to the proposed sanction formula. One commenter contended that rather than a strict sanction system to be applied if States simply failed to meet a particular numerical performance standard, the law intended that a more general test be applied to determine, after weighing a variety of factors, whether States are running meaningful and effective programs.

7 U.S.C. 2015(d)(K)(ii) states, "If the Secretary determines that a Stateagency has failed, without good cause, to comply with such a requirement, including any failure to meet a performance standard . . . the Secretary may withhold from such state in accordance with section 16(a), (c) and (h), such funds as the Secretary deems appropriate . . . ". This language indicates to the Department that the proposed sanction system is consistent with congressional intent, and it will remain in this final rule. The formula provides a clear standard by which the Department can measure the degree of States noncompliance. Provision of such a standard ensures that all States are treated equally. We do wish to point out, however, that when evaluating whether or not a State has performed adequately the Department will seriously consider the causes for the State's failure to meet its standard. If a State can show that it made an exemplary effort to place food stamp participants into its employment and training program or into paid employment, the Department will take this into account in determining whether good cause exists for the failure. The Department will also consider such factors as increases in food stamp recipient earnings, changes in the State agency's caseload and a reduction in the number of persons participating in the Food Stamp Program if the State can provide such information.

There was some question in the comments about the procedures FNS

will follow if a determination of State agency noncompliance is made. The proposed rule said that the formal warning, appeal and administrative review procedures will apply.

In this rule, a distinction will be made between cases in which State agency administration of the E & T requirements is out of compliance with regulations or the Food Stamp Act during the course of the year, and cases where States have met the program operation requirements but have fallen short of meeting their performance standards. In the first case, where there are operational deficiencies such as failure to implement an E & T program, the provisions of § 276.4 will apply. This entails written advance notification of a deficiency, followed by a formal warning of the possibility of a disallowance of funds if the deficiency is not corrected, and a disallowance of funds if necessary. In the second case, if it is determined after the close of a fiscal year, that a State has failed without good cause to meet its performance standard, the formal warning process will not be used, since once the fiscal year is over there is no remedy or corrective action which can be taken retrospectively to aid the State in meeting its standard. In this case the amount of funds determined by application of the formula described earlier will be disallowed from the current fiscal year administrative funds. At that point the State agency would be advised of its right to pursue administrative and judicial review of the disallowance under section 14 of the Food Stamp Act. 7 U.S.C. 2022.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food Stamps, Grant programs–social programs.

7 CFR Part 272

Alaska, Civil rights, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 277

Food Stamps, Government procedure, Grant programs-social programs, Investigations, Records, Reporting and recordkeeping requirements.

PART 271—GENERAL INFORMATION AND DEFINITIONS

Accordingly, 7 CFR Part 271, 272, 273, and 277 are amended as follows:

1. The authority citation for Parts 271, 272, 273, and 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2029.

§ 271.2 [Amended]

2. In § 271.2 the following definitions are added in alphabetical order within the section:

"Assessment" an in-depth evaluation of employability skills coupled with counseling on how and where to search for employment. If combined with work experience, employment search or training, an assessment of this nature could constitute part of an approvable employment and training component.

"Base of Eligibles" Employment and training mandatory participants plus persons who volunteer for employment and training participation.

"Employment and training component" a work experience, work training or job search program, as described in section 6(d)(4)(B)(iv) of the Food Stamp Act of 1977 (7 U.S.C. 2014(2)(4)(B)) designed to help food stamp recipients move promptly into unsubsidized employment.

"Employment and training mandatory participant" a Food Stamp Program applicant or participant who is required to work register under 7 U.S.C. 2014(d)(1) or (2) and who the State determines should not be exempted from participation in an employment and training program.

"Employment and training program" a program operated by each State agency consisting of one or more work, training, education or job search components.

"Exempted" for purposes of § 273.7 excluding paragraphs (a) and (b)—this term refers to a work registered person or persons excused by the State, under the conditions in § 273.7(f) from participation in an employment and training program.

"Newly work registered" food stamp participants work registered at the point of application.

"Placed in an employment and training program" a State agency may count a person as "placed" in an employment and training program when the individual commences a component or is sent a Notice of Adverse Action (NOAA) for noncompliance with a food stamp employment and training requirement. Persons who refuse to work register or who voluntarily quit a job and are sent a NOAA may not be considered "placed".

"Screening" an evaluation by the eligibility worker as to whether a person should or should not be referred for participation in an employment and training program. This activity would not be considered an approvable E&T component.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. In § 272.1 a new paragraph (g)(82) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) Implementation. * * *

(82) Amendment No. 281 State agencies shall implement the provisions of this amendment no later than April 1, 1987.

4. In § 272.2 the seventh sentence of paragraph (a)(2) is amended by adding the words, "the Employment and Training Plan," after the words "(currently reserved)," in paragraph (c)(3)(ii) the text after the words "routine user status" is removed and a period is inserted after the word "status", and a new paragraph (d)(1)(v) is added to read as follows:

§ 272.2 Plan of operation.

* * * * *

(d) * * *

(1) * * *

(v) Employment and Training Plan as required in §273.7 (c)(4) and (5)

* * * * *

5. In § 272.3, paragraph (a)(1) is amended by removing the period at the end of paragraph (a)(1)(ix); adding a semi-colon in its place; and adding a new paragraph (a)(1)(x) to read as follows:

§272.3 Operating guidelines and forms.

a) *Coverage of operating guidelines.*

* * *

(1) * * *

(x) Work registration and employment and training requirements.

* * * * *

PART 273—[AMENDED]

6. In § 273.1 a new paragraph (b)(2)(vii) is added; the text after the heading in paragraph (d) is redesignated as paragraph (d)(1) and a new paragraph (d)(2) is added. The addition reads as follows:

§ 273.1 Household concept.

* * * * *

(b) *Nonhousehold members.* * * *

(2) * * *

(vii) Persons disqualified for noncompliance with the work requirements of § 273.7.

* * * * *

(d) *Head of household.* * * *

(2) For purposes of failure to comply with §§ 273.7 and 273.22 head of household shall be considered to be the principal wage earner. The principal wage earner shall be the household member (including excluded members) who is the greatest source of earned income in the two months prior to the month of the violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours. No person of any age living with a parent or person fulfilling the role of a parent who is registered for work or exempt from work registration requirements because such parent or person fulfilling the role of a parent is subject to and participating in the work incentive program under Title IV of the Social Security Act, or is in receipt of unemployment compensation (or has registered for work as part of the unemployment compensation application process), or is employed or self employed and working a minimum of 30 hours weekly or receiving weekly earnings equal to the Federal minimum wage multiplied by 30 hours shall be considered the head of household. If there is no principal source of earned income in the household, the household may designate the head of household.

* * * * *

7. In § 273.7 the title and paragraph (a) are revised to read as follows:

§ 273.7 Work requirements.

(a) *Persons required to register.* Each household member who is not exempt by paragraph (b)(1) of this section shall be registered for employment by the State agency at the time of application, and once every twelve months after initial registration, as a condition of eligibility. The registration form need not be completed by the member required to register.

* * * * *

8. In § 273.7, paragraph (b)(1)(i) is amended by removing the number 18 in the first and second sentences and adding in its place the number 16; a new sentence is added to the end of paragraph (b)(1)(i); the first sentence of paragraph (b)(1)(iii) is revised; and paragraph (b)(2)(i) is revised;

* * * * *

(b) *Exemptions from work registration.*

(1) * * *

(i) * * * A person age sixteen or seventeen who is not a head of a household or who is attending school, or enrolled in an employment training program on at least a half-time-basis is exempt.

* * * * *

(iii) A household member subject to and complying with any work requirement under title IV of the Social Security Act, including WIN registration. * * *

* * * * *

(2)(i) Persons losing exemption status due to any changes in circumstances that are subject to the reporting requirements of § 273.12 (such as loss of employment that also results in a loss of income of more than $25 a month, or departure from the household of the sole dependent child for whom an otherwise nonexempt household member was caring) shall register for employment when the change is reported. If the State agency does not use a work registration form, it shall annotate the change to the member's exemption status. If a work registration form is used, the State agency shall be responsible for providing the participant with a work registration form when the change is reported. Participants shall be responsible for returning the form to the State agency within 10 calendar days from the date the form was handed to the household member reporting the change in person, or the date the State agency mailed the form. If the household fails to return the form, the State agency shall issue a notice of adverse action stating that the household is being terminated and why, but that the household can avoid termination by returning the form.

* * * * *

9. In § 273.7 paragraph (c) is revised to read as follows:

* * * * *

(c) *State agency responsibilities.* (1) The State shall register for work each household member not exempted by the provisions of § 273.7(b). Upon reaching a determination that an applicant or a member of the applicant's household is required to register, the State agency shall explain to the applicant the pertinent work requirements, the rights and responsibilities of work registered household members, and the consequences of failure to comply. The State agency shall provide a written statement of the above to each work registrant in the household. A notice shall also be provided when a previously exempt member or new household member becomes subject to a work requirement, and at recertification. The State agency shall permit the applicant to complete a record or form for each household member required to register for employment in accordance with paragraph (a) of this section. Household members are considered to have registered when an identifiable work registration form is submitted to the State agency or when the registration is otherwise annotated or recorded by the State.

(2) The State agency shall be responsible for screening each work registrant to determine whether or not it is appropriate, based on the State's criteria, to refer the individual to an employment and training program, and if appropriate, referring the individual to an employment and training program component. Upon entry into each component the registrant applicant or volunteer, should be told, either orally or in writing, the requirements of the component, what will constitute noncompliance and the sanctions for noncompliance. The State shall take appropriate sanction action within ten working days after learning of noncompliance. If States wish to use different intake and sanction systems which are compatible with title IV–A work programs such systems shall be proposed in the Senate's plan, and subject to the Secretary's approval.

(3) The State agency shall design and operate an employment and training program which may consist of one or more or a combination of employment and/or training components as described in § 273.7(f). The State agency must ensure that it is notified by the agency or agencies operating its E&T components within ten days if an E&T mandatory participant fails to comply with E&T requirements.

(4) By March 2, 1987 each State agency must prepare and submit an employment and training plan to its appropriate FNS Regional Office and to the FNS office in Alexandria, Virginia. This initial plan may be regarded as interim, to cover the first six months of operation if the State chooses. The plan shall be available for public inspection at the State agency headquarters. In its plan, the State shall detail the following:

(i) The nature of the employment and training components the State plans to offer and the reasons for such components, including cost information. The methodology for State reimbursement for education components shall be specifically addressed;

(ii) An operating budget for the Federal fiscal year with an estimate of the cost of operation for one full year. Any State which will request 50 percent federal reimbursement for State E & T

administrative costs, other than for participant reimbursements, shall include in its plan, or amendments to its plan, an itemized list of all activities and costs for which those Federal funds will be claimed. Costs in excess of the federal grant shall be allowed only with the prior approval of the Department and must be adequately documented to assure that they are necessary, reasonable and properly allocated;

(iii) The categories and types of individuals the State seeks to exempt from E&T participation, the basis used to determine these exemptions, including any cost information and the estimated percentage of work registrants the State plans to exempt;

(iv) The characteristics of the population the State does intend to place;

(v) The estimated number of volunteers the State expects to place in its employment and training program;

(vi) The geographic areas covered and not covered by the plan and why, and the type and location of services to be offered;

(vii) The method the State will use to count all work registrants the first month of each fiscal year;

(viii) If a State plans to offer components which are significantly more intensive than the minimum level of effort specified in § 273.7(f), or plans to concentrate its efforts on persons who may be difficult to place, due to employment obstacles, it shall be made clear in the State's employment and training plan. If, because of the nature of its components, or the population served, a State believes that an adjustment to the performance standard established in § 273.7(o) is appropriate, and wishes to request a revision in the standard, it shall specify the percentage of its work registered population it intends to serve, and provide the Department with detailed information about why it has chosen to operate such a component or components, or chosen to focus on certain persons, the intended benefits to be gained by the recipient and Federal and State governments, and the number of persons it plans to serve in the component. The information provided to the Department will be used in determining whether the State's performance standard will be affected;

(ix) The organizational relationship between the units responsible for certification and the units operating the employment and training components. FNS is specifically concerned that the lines of communication be efficient and that noncompliance be reported to the certification unit within ten working days after such noncompliance is determined;

(x) The relationship between the State agency and other organizations it plans to coordinate with for the provision of services. Copies of contracts shall be available for inspection;

(xi) The availability, if appropriate, of employment and training programs to Indians living on reservations.

(5) After the March 2, 1987 submission, E&T plans shall be submitted by August 15, 1987 for FY 1988 and August 15, 1988 for FY 1989. Beyond that, plans shall be submitted biannually, 45 days before the start of the fiscal year, beginning with FY 1991. States must submit plan revisions to the appropriate FNS regional office for approval if they plan to alter the nature or location of their components or the number or characteristics of persons served. The proposed changes shall be submitted for approval at least 30 days prior to planned implementation.

(6) The State shall submit quarterly reports to FNS no later than 45 days after the end of each Federal fiscal quarter containing monthly figures for the number of:

(i) Participants newly work registered;

(ii) Work registrants exempted by the State from participation in an employment and training program;

(iii) Participants who volunteer for and commence participation in an approved E&T component;

(iv) E&T mandatory participants who commence an approved E&T component including Food Stamp Program applicants in States which operate a component for applicants;

(v) Work registrants sent a Notice of Adverse Action for failure to comply with E&T requirements, and the number of applicants who were denied food stamp certification or recertification for failure to comply with an E&T component.

(7) States shall submit annually, on their first quarterly report the number of work registered persons in that State as in October of the new fiscal year.

(8) States shall submit annually, on their final quarterly report the following information:

(i) The number of Food Stamp Program work registrants who were exempted as part of a category of persons during the course of the year separated by the specific reasons for the exemptions.

(ii) The number of food stamp participants (E&T mandatory and volunteers) placed in each E&T component offered by the State agency.

(9) Additional information may be required of individual State agencies on an as needed basis depending on the contents of the State's plan regarding the type of components offered and the characteristics of persons served.

(10) States must ensure, to the maximum extent practicable, that employment and training programs are provided for Indians living on reservations.

* * * * *

10. In § 273.7 paragraph (d) including its title is revised in its entirety to read as follows:

* * * * *

(d) *Federal financial participation*—(1) *Federal cost-sharing.* (i) State agencies shall receive an employment and training program grant for each fiscal year or portion of the fiscal year in which they operate an employment and training program. The grant shall require no State matching.

(A) Except as otherwise provided in paragraph (B), the Secretary shall allocate the funding available each fiscal year or portion of the fiscal year for employment and training grants on the basis of the average monthly number of participants in each State as a percentage of the average monthly number of participants nationwide as averaged over the most recent Federal fiscal year for which complete data is available.

(B) The Secretary may adjust the level of grants during a fiscal year to take into account substantial amounts of funds for employment and training programs which are unlikely to be used by a State agency during the fiscal year and which could be productively used by another State agency or agencies, with concurrence of the State agencies involved.

(C) State agencies shall use employment and training program grants to fund the administrative costs of planning, implementing and operating employment and training programs in accordance with approved State agency plans. Employment and training grants shall not be used for the process of determining whether a participant shall be work registered, the work registration process, or any further screening performed during the certification process, nor for sanction activity which takes place after the operator of an employment and training component has reported noncompliance without good cause. For purposes of this paragraph, the certification process shall be considered to have ended when an individual is referred to an employment and training component for assessment or participation. Employment and training grants shall also not be used to subsidize the wages of participants, or

to reimburse participants under paragraph (d)(1)(ii) of this section.

(D) A State's receipt of the employment and training program grant as allocated under subparagraph (d)(1)(i) (A) or (B) of this paragraph is contingent on the Secretary's approval of the State's employment and training plan. If an adequate plan is not submitted, the Secretary may reallocate a State's grant among other States with approved plans. Non-receipt of an employment and training program grant does not release a State from performance requirements under paragraph (o) or sanctions for insufficient performance.

(E) Employment and training funds shall not supplant State of local funds devoted to basic education programs. Education expenses are approvable to the extent that employment and training component costs exceed the normal cost of services provided to persons not participating in an employment and training program.

(ii) *Participant reimbursement.* (A) The State agency shall reimburse participants in employment and training programs, including volunteers and applicants required to perform job search, for costs of transportation or other costs that are reasonably necessary and directly related to participation in the employment and training program, up to $25 per participant per month. The State agency may reimburse participants for expenditures beyond $25 per month. Only costs which are up to but not in excess of $25 per month for any participant shall be subject to Federal cost sharing. Reimbursement shall not be provided from employment and training grants provided under paragraph (d)(1)(i) of this section.

(B) Such costs shall be the actual costs of participation, unless the State agency has a method approved in its State plan for providing allowances to participants to reflect approximate costs of participation. If a State agency has an approved method to provide allowances rather than reimbursements, it must provide participants an opportunity to claim actual expenses which exceed the standard, up to $25 or such other maximum level of reimbursements which is established by the State agency.

(C) No participant cost which has been reimbursed under a workfare program under § 273.22, title IV of the Social Security Act or other work program shall be reimbursed under this section.

(D) Any portion of child care costs which are reimbursed under this section may not be claimed as an expense and used in calculating the child care deduction under § 273.9(d)(4) for determining benefits.

(iii) Fifty percent of all other administrative costs incurred by State agencies in operating employment and training programs, above the costs referenced in paragraphs (1)(i) of this section, shall be funded by the Federal government.

(iv) Enhanced cost-sharing due to placement of workfare participants in paid employment is available only for workfare programs funded under § 273.22(g) at the 50 percent reimbursement level and reported as such.

(2) *Funding mechanism.* Employment and training program funding will be disbursed through States' Letters of Credit in accordance with § 277.5 of the regulations. The State agency shall ensure that records are maintained which support the financial claims being made to FNS.

(3) *Fiscal recordkeeping and reporting requirements.* Total employment and training expenditures shall be reported on the Financial Status Report (SF–269) in the column containing "other" expenses. Employment and training expenditures shall also be separately identified in an attachment to the SF–269 to show, as provided in instructions, total State and Federal employment and training expenditures; expenditures funded with the unmatched Federal grants; State and Federal expenditures for participant reimbursements; State and Federal expenditures for employment and training costs at the 50 percent reimbursement level; and State and Federal expenditures for optional workfare program costs, operated under section 20 of the Food Stamp Act and § 273.22 of the regulations. Claims for enhanced funding for placements of participants in employment after their initial participation in the optional workfare program shall be submitted in accordance with § 273.22.

* * * * *

11. In § 273.7 paragraph (e) including its title, is revised in its entirety to read as follows:

* * * * *

(e) *Work registrant requirements.* Work registrants shall:

(1) Participate in an employment and training program if assigned by the State agency;

(2) Respond to a request from the State agency or its designee for supplemental information regarding employment status or availability for work;

(3) Report to an employer to whom referred by the State agency or its designee if the potential employment meets the suitability requirements described in paragraph (i) of this section;

(4) Accept a bona fide offer of suitable employment at a wage not less than the higher of either the applicable State or Federal minimum wage;

* * * * *

12. In § 273.7 paragraph (f) including its title, is revised in its entirety to read as follows:

* * * * *

(f) *Employment and training programs.* Persons required to register for work and not exempted by the State agency from placement in an employment and training program shall be subject to the requirements imposed by the State agency for that individual. Such individuals are referred to in this section as E&T mandatory participants. Requirements may vary among participants. Failure to comply without good cause with the requirements imposed by the State agency shall result in disqualification as specified in § 273.7(g).

(1) *Components.* To be considered acceptable by FNS, any component offered by a State agency shall entail certain levels of effort by the participants. The level of effort should be comparable to spending approximately 12 hours a month for two months (or less in workfare or work experience components if the household's benefit divided by the minimum wage is less than this amount) making job contracts; however, FNS may approve components which do not meet this guideline which it determines will advance program goals. An initial screening by an eligibility worker to determine whom to place in an employment and training program does not constitute a component. An employment and training program offered by a State agency must offer one or more of the following components:

(i) A job search program comparable to that required for the AFDC program under Part A of title IV of the Social Security Act. The State may require that an individual participate in a job search program from the time an application is filed for an initial period of up to eight consecutive weeks. Following this initial period (which may extend beyond the date when eligibility is determined) the State may require an additional job search period, not to exceed eight weeks (or its equivalent) in any period of 12 consecutive months. The first such period of 12 consecutive months shall begin at any time following the close of the initial period. States must not

impose requirements which would delay the determination of an individual's eligibility for aid or in issuing benefits to any household which is otherwise eligible.

(ii) A job search training program that includes reasonable job search training and support activities. Such a program may consist of job skills assessments, job finding clubs, training in techniques for employability, job placement services, or other direct training or support activities, including educational programs determined by the State agency to expand the job search abilities or employability of those subject to the program. Education components are approvable if they directly enhance the employability of the participants. A direct link between the education and job-readiness must be established for a component to be approved.

(iii) A workfare program as described in § 273.22;

(iv) A program designed to improve the employability of household members through actual work experience or training, or both, and to enable individuals employed or trained under such programs to move promptly into regular public or private employment. Such an employment or training experience shall:

(A) Limit employment experience assignments to projects that serve a useful public purpose in fields such as health, social services, environmental protection, urban and rural development, welfare, recreation, public facilities, public safety, and day care;

(B) To the extent possible, use the prior training, experience, and skills of the participating member in making appropriate employment or training experience assignments;

(C) Not provide any work that has the effect of replacing the employment of an individual not participating in the employment or training experience program; and

(D) Provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours.

(v) A project, program or experiment such as a supported work program, or a JTPA or State or local program aimed at accomplishing the purpose of the employment and training program.

(2) *Exemptions.* Subject to the requirements for overall plan approval by the Secretary State agencies may exempt certain work registered individuals and categories of individuals from employment and training participation. Individual exemptions shall be evaluated at each recertification and exemptions granted to categories of persons should be reviewed no less frequently than annually to determine whether they remain valid. If a State recognizes that because of changes in its caseload the exemption limit set forth in its approved plan is insufficient, the State may seek to amend its State plan during the year. FNS will consider changes in a State's caseload in determining whether a State has complied with its exemption limit.

(i) Persons who have participated in the Food Stamp Program for 30 days or less may be exempted from participation.

(ii) Categories of persons for whom an employment and training requirement would be impracticable may be exempted. Factors such as the availability of work opportunities and the cost-effectiveness of the requirements may be considered. In making the determination of exemption, the State agency may designate a category of all households residing in a specific area of the State.

(iii) State agencies may exempt from participation individual household members for whom participation is impracticable because of personal circumstances such as lack of job readiness, the remote location of work opportunities, physical condition, and the unavailability of child care.

(iv) Persons who are assigned to a job or training component, do not commence the component and are determined to have good cause shall be considered exempted if the reason for good cause will last for 60 days or longer. When the reason for the exemption is no longer applicable, the person may be placed in a component.

(3) *Time spent in an employment and training program.* (i) The number of months a participant spends in an employment and training component shall be determined by the State agency with the exception of the limitations placed on job search in section (f)(1)(i). The State agency may also determine the number of successive components in which a participant may be placed.

(ii) The time spent by the members of a household collectively each month in an employment and training work program including, but not limited to those carried out under § 273.7(f)(1) (iii) and (iv), combined with any hours worked that month in a workfare program under § 273.22 shall not exceed the number of hours equal to the household's allotment for that month divided by the higher of the applicable State or Federal minimum wage. The total hours of participation in an E&T non-work component for any household member individually in any month, together with any hours worked in a workfare program under § 273.22 and any hours worked for compensation (in cash or in kind), shall not exceed 120.

(4) *Voluntary participation.* (i) A State agency may operate program components in which individuals elect to participate.

(ii) A State agency shall permit, to the extent it deems practicable, persons exempt from the work registration or employment and training requirements, or those not exempt who have complied or are complying with the requirements, to participate in any employment and training program it offers.

(iii) Voluntary participants in an employment and training component shall not be disqualified for failure to comply with employment and training requirements.

(iv) The hours of participation or work of a volunteer may not exceed the hours required of E&T mandatory participants, as specified in paragraph (3) of this section.

* * * * *

13. In § 273.7 paragraph (g)(1), including the title, is revised to read as follows:

* * * * *

(g) *Failure to comply*—(1) *Noncompliance with Food Stamp Program work regulations.* If the State agency determines that an individual other than the head of household as defined in § 273.1(d) has refused or failed without good cause to comply with the requirements imposed by this section and by the State agency, that individuals shall be ineligible to participate in the Food Stamp Program for two months, as provided in this paragraph and is treated as an ineligible household member, per § 273.1(b)(2). If the head of household fails to comply, the entire household is ineligible to participate as provided in this paragraph. Ineligibility in both cases shall continue either until the member who caused the violation complies with the requirement as specified in paragraph (h) of this section, leaves the household, becomes exempt from work registration through § 273.7(b) other than through the exemptions of sections (b)(1)(iii) or (b)(1)(v), or for two months, whichever occurs earlier. If any household member who failed to comply joins another household as head of the household, that entire new household is ineligible for the remainder of the disqualification period. If the member who failed to comply joins another household where he/she is not head of household, the individual shall be considered an ineligible household member per § 273.1(b)(2). The State

agency should determine whether good cause for the non-compliance exists, as discussed in paragraph (m) of this section. Within 10 days of the State determining the noncompliance was without good cause, the State agency shall provide the individual or household with a notice of adverse action, as specified in § 273.13. Such notification shall contain the particular act of noncompliance committed, the proposed period of disqualification and shall specify that the individual or household may reapply at the end of the disqualification period. Information shall also be included on or with the notice describing the action which can be taken to end or avoid the sanction, and procedures contained in paragraph (h) of this section. The disqualification period shall begin with the first month following the expiration of the adverse notice period, unless a fair hearing is requested. Each individual or household has a right to a fair hearing to appeal a denial, reduction, or termination of benefits due to a determination of nonexempt status, or a State agency determination of failure to comply with the work registration or employment and training requirements of this section. Individuals or households may appeal State agency actions such as exemption status, the type of requirement imposed, or State agency refusal to make a finding of good cause, if the individual or household believes that a finding of failure to comply has resulted from improper decisions on these matters. The State agency or its designee operating the relevant component shall receive sufficient advance notice to either permit the attendance of a representative or ensure that a representative will be available for questioning over the phone during the hearing. A representative of the appropriate agency shall be available through one of these means. A household shall be allowed to examine its employment component casefile at a reasonable time before the date of the fair hearing, except for confidential information (which may include test results) that the agency determines should be protected from release. Information not released to a household may not be used by either party at the hearing. The results of the fair hearing shall be binding on the State agency.

* * * * *

14. In § 273.7, introductory paragraph (h)(1) is redesignated as introductory paragraph (h) and the first sentence is revised; paragraphs (h)(1)(v) and (h)(2) are removed; paragraphs (h)(1)(i) through (h)(1)(iv) are redesignated as paragraphs (h)(1) through (h)(4); newly redesignated paragraph (h)(2) is revised; (h)(3) is amended by removing the words "by the State employment security office" and paragraph (h)(4) is amended by removing the words "by the SESA". The revisions read as follows:

* * * * *

(h) *Ending disqualification.* Following the end of the 2 month disqualification period for noncompliance with the work registration or employment and training requirements, participation may resume if a disqualified individual or household applies again and is determined eligible.

* * *

* * * * *

(2) Refusal to respond to a request from the State agency or its designee requiring supplemental information regarding employment status or availability for work—compliance with the request.

* * * * *

15. In § 273.7 introductory paragraph (i)(1) is revised to read as follows:

* * * * *

(i) *Suitable employment.* (1) In addition to any criteria established by State agencies, employment shall be considered unsuitable if:

* * * * *

16. In § 273.7 the first sentence of paragraph (m) is amended by removing the words "job search" and by adding the words "employment and training" in their place.

17. In § 273.7 paragraph (n) is amended by removing the words "primary wage earner" and adding, in their place, the words "head of household"; paragraph (n)(1)(iv) is revised; a new sentence is added to the end of paragraph (n)(1)(vi); and a new paragraph (n)(5) is added. The additions and revision read as follows:

* * * * *

(n) *Voluntary quit.* * * *

(1) *Determining whether a voluntary quit occurred and application processing.* * * *

(iv) If a determination of voluntary quit is established, the State agency shall then determine if the member who quit is the head of household as defined in § 273.1(d)(2).

* * * * *

(vi) * * * Persons who have been disqualified for quitting a job as head of household of one household will carry their sanction with them if they join a new household as its head. The new household will be ineligible for the remainder of the sanction period unless the person who caused the disqualification ends it per § 273.7(n)(5).

* * * * *

(5) *Ending a voluntary quit disqualification.* (i) Following the end of the disqualification period a household may begin participation in the program if it applies again and is determined eligible.

(ii) Eligibility may be reestablished during a disqualification period and the household shall, if otherwise eligible, be permitted to resume participation if the member who caused the disqualification secures new employment which is comparable in salary or hours to the job which was quit, or leaves the household. Eligibility may also be reestablished if the violator becomes exempt from the work registration requirements through § 273.7(b) other than paragraphs (b)(1)(iii) or (b)(1)(v) of that section. Should a household which has been determined to be noncompliant without good cause split into more than one household, the sanction shall follow the member who caused the disqualification. If a head of household who committed the violation joins another food stamp household as head of the household, that household shall be ineligible for the balance of the period of ineligibility.

* * * * *

18. In § 273.7 a new paragraph (o) is added to read as follows.

* * * * *

(o) *Performance standards.* The Secretary shall establish an annual performance standard for the minimum number of eligible persons that States must place in employment and training programs.

(1) *Performance Formula.* To ascertain a State's level of performance at the end of each fiscal year, FNS will divide the number of E&T mandatory participants plus volunteers the State has "placed" in its E&T program over the course of the year (the numerator) by the number of E&T mandatory participants who were eligible to have been placed in the program over the course of the year plus volunteers (the denominator). The denominator is herein referred to as the "base of eligibles."

(2) *Counting placements in an employment and training program.* State agencies may consider a person placed in an E&T program, for purposes of performance standards, if the person commences an employment and training component, or fails to comply with E&T requirements and is denied certification or is sent a Notice of Adverse Action for the noncompliance. NOAAs sent for noncompliance with work registration or voluntary quit shall not count as placements. Assigned persons who have good cause for noncompliance shall not

be counted as placed. If the good cause for the noncompliance is temporary (less than 60 days), the person shall be referred again to a component as soon as practicable. If the good cause represents a situation or condition which will continue for 60 days or more, the person shall be considered exempt by the State agency. If a participant reports to a component which involves several months, that individual would be counted as placed in the initial month only. Each time a participant is placed in a different component after having completed a prior component, he/she may be counted as placed. If participation in one type of E&T component is not continuous, the participant may be counted as having been placed more than once in the same component. If an E&T mandatory participant does not comply with E&T requirements, and a Notice of Adverse Action is sent, the person is counted as placed in the month the NOAA is mailed.

(3) *Counting the "base of eligibles".* The base of persons eligible to participate in an E&T program (the denominator) consists of all work registrants in the month of October plus newly work registered food stamp recipients who have not been exempted by the State under § 273.7(f)(2) of these regulations from participation in an E&T program, and food stamp program applicants who are assigned by the State to enter an E&T component at the time of application and are subsequently certified for food stamp participation. These groups are considered E&T mandatory participants. In addition, volunteers who are placed in an E&T component shall be counted in the base of eligibles. State agencies need not count any individual in the base of eligibles more than once in a fiscal year.

(4) *Applicant participation.* Some States may wish to operate a job search or other component which begins at the time of Food Stamp Program application. The applicants who are placed in this component (who either perform the job search or who do not and are denied eligibility for failure to comply with the E&T requirement) should be counted as "placed". These persons need be counted in the base of eligibles, or the denominator, only if their application is approved, they are certified for food stamp benefits and they are work registered. At that time, they should be counted as "newly work registered" if they have not been counted in this category in the previous 12 months. If an applicant performs a job search and is either denied eligibility, for causes other than non-compliance with the E&T requirements, or certified but exempted from work registration, the individual need not be counted in the base of eligibles.

(5) *Accounting for short-term participants.* There are a number of work registrants considered E&T mandatory who are counted in the base of eligibles but who remain on the Food Stamp Program for such a short period of time States are unable to place them in an E&T component. These short term recipients inflate the State's base of eligibles and make it more difficult for States to meet their performance standard. States may choose one or two methods to counteract the effects of short term participants.

(i) States may exempt from E&T participation persons who will leave the Food Stamp Program within 30 days of application. This may mean that States will not attempt to serve such persons unless they volunteer for E&T participation. States must count each individual as having been exempted under the reporting requirements of § 273.7(c)(6)(ii).

(ii) States may, at the close of the fiscal year, subtract 10 percent from their base of eligibles (denominator) to account for E&T mandatory participants who have left the program within 30 days of application. This 10 percent adjustment may be made without supporting documentation. Since the short term mandatory participants are not exempted from participation, States may attempt to place them in a component and may count them as placed (in their numerator) if they meet the placement criteria of paragraph (2) of this section.

(6) *Performance date collection.* To determine the annual total in the base of eligibles (denominator) State agencies shall count the actual number of work registered individuals in the first month of the fiscal year. Each subsequent month, the State shall add to that figure the number of E&T mandatory participants, and volunteers who were placed in an E&T component that month. Separate counts should be maintained for mandatory participants and volunteers. The method of measuring the number of persons "placed" (the numerator) shall be the same. A count of persons placed each month of the fiscal year shall be added cumulatively. A cumulative total shall be kept monthly for the base of eligibles and the number of persons placed, and the monthly totals shall be reported to FNS no later than 45 days after the end of each quarter per section (c)(6) of this paragraph.

(7) *Percentage of persons to be placed.* In the first quarter of Fiscal Year 1989, 35 percent of E&T mandatory participants shall be placed in an employment and training program; the percent of mandatory participants placed during the remainder of FY 1989 shall average 35; and in Fiscal Year 1990, 50 percent of E&T mandatory participants shall be placed. Beyond Fiscal Year 1990, State agencies will receive instructions and standards from FNS annually.

(8) *Variations in performance standards.* (i) The Department will adjust the performance standard for an individual State if the State can show, prospectively, that the components it plans to offer or the type of participant it plans to serve will require a significantly higher level of effort than the minimum level of effort described in § 273.7(f). If a State proposes that its performance standard be adjusted, it should propose the amount of the requested adjustment and provide a justification. The additional documentation called for in § 273.7(c) must be submitted to FNS in the State's employment and training plan. In determining whether an adjustment of the performance standard is warranted and the level of the adjustment, FNS will consider the number of persons who will be placed, the percentage of planned placements compared to the State's E&T mandatory population, the intensity and effectiveness of the components, and the cost.

(ii) Only in extraordinary circumstances should a State expect to have a performance standard approved which is lower than 40 percent of the nationwide standard.

* * * * *

19. In § 273.7 a new paragraph (p) is added to read as follows:

* * * * *

(p) State noncompliance with Employment and Training requirements.

(1) If a State agency fails to efficiently and effectively administer its employment and training program, the provisions of § 276.1(a)(3) shall apply.

(2) If a State has failed to meet its established performance standard, FNS shall determine whether there was good cause for the noncompliance. Good cause for State noncompliance is specified in § 276.6. In determining whether a State agency has met a performance standard, the Secretary will also consider factors such as the extent to which volunteers have participated in the employment and training program, placements in unsubsidized employment, increases in

earnings and the reduction in the number of persons participating in the Food Stamp Program, and changes in the States caseload, if the State supplies the Agency with appropriate documentation. Lack of E & T funding at the 100 percent Federal level shall not constitute good cause.

(3) If the Agency finds that there was not sufficient good cause for the State's failure to meet its performance standards the Agency may disallow administrative funds. The dollar amount of the funds disallowed shall be calculated by reducing the amount of the State's 100 percent Federal employment and training allocation for the pertinent year proportionately to the percentage below its standard the State's performance fell. This amount shall then be disallowed from the State's administrative funds as specified in § 276.4(c) except that no formal warning is required. The Secretary may withhold a larger percentage of the allocation depending on the severity of the noncompliance. Appeal and administrative review provisions of §276.1(b), shall apply.

§ 273.8 [Amended]

19. In § 273.8 paragraph (h)(4)(iii) is amended by removing the words "job search criteria" and by adding the words "employment and training criteria" in their place.

PART 277—PAYMENT OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

20. Section 277.4 is amended by adding a new paragraph (b)(9) to read as follows:

§ 277.4 Funding.

* * * * *

(b) * * *

(9) Employment and training program grants, as outlined in § 273.7(f) shall be 100 percent Federally-funded.

* * * * *

Dated: December 24, 1986.

Robert E. Leard,

Administrator.

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Wednesday
December 31, 1986

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 344

Regulations Governing United States Treasury Certificates of Indebtedness—State and Local Government Series, United States Treasury Notes—State and Local Government Series, and United States Treasury Bonds—State and Local Government Series; Interim Rule With Request for Comments

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 344

Regulations Governing United States Treasury Certificates of Indebtedness—State and Local Government Series, United States Treasury Notes—State and Local Government Series, and United States Treasury Bonds—State and Local Government Series

AGENCY: Fiscal Service, Bureau of the Public Debt, Department of the Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of the Treasury is issuing revised regulations governing all United States Treasury Certificates of Indebtedness, Notes, and Bonds of the State and Local Government Series. These securities are available for purchase, as provided in this offering, by state and local governments and certain other entities with proceeds (or amounts treated as proceeds) which are subject to yield restrictions or arbitrage rebate requirements under the Internal Revenue Code.

The regulations are divided into Subparts A, B, and C. Subpart A lists provisions which apply generally to United States Treasury securities—State and Local Government Series. Subpart B revises existing regulations and characterizes the securities offered thereunder as being of the time deposit State and Local Government Series. Subpart C sets out regulations for a new demand deposit State and Local Government Series security.

Subpart B, "Time Deposit Securities," reflects changes made pursuant to the Tax Reform Act of 1986 as well as changes contained in a proposed rule published in the **Federal Register** (45 FR 57747) on August 29, 1980. These changes include a reduction in the minimum maturity period for securities, flexibility in the advance notice requirements, and a waiving of the penalty under certain circumstances for failure to complete a subscription. Other changes include a further definition of the type of funds that can be invested, and an elaboration of the type of entity eligible to invest, in accordance with the purpose for which these securities are offered for sale. Notices of investment and early redemption are prescribed to enable the Treasury to better monitor its cash management, as well as to handle transactions more efficiently. It is also provided that all payments in connection with securities for which subscriptions are submitted after February 1, 1987, will be made by direct deposit with a financial institution. Updated early redemption formulas with examples are appended. A number of minor changes have also been made to clarify existing provisions.

Subpart C, "Demand Deposit Securities," implements statutory provisions of the Tax Reform Act of 1986, Pub. L. 99–514, with respect to the offering of a one-day certificate of indebtedness. This security, to be offered in 1987, will be treated as a tax-exempt bond for purposes of sections 148 and 143(g)(3) of the Internal Revenue Code and, therefore, will enable entities to invest proceeds of tax-exempt bonds in an obligation which avoids the earning of rebatable arbitrage. The regulations published herein apply to an interim program which is being offered until such time as enhancements to the basic program can be made. Under this interim program, each deposit will be treated as a unique account. The enhanced program will provide for a single account for each bond issue to which additional deposits may be made.

DATES: Effective Date: The regulations are effective January 1, 1987. Implementation of the regulations will occur beginning February 1, 1987. Comments will be received on or before March 2, 1987.

ADDRESS: Send comments to the Office of the Chief Counsel, Bureau of the Public Debt, Room 503, E Street Building, Washington, DC 20239–0001.

FOR FURTHER INFORMATION CONTACT:

Sandy Dyson, Attorney-Adviser, (202–376–4320),

or

Margaret Marquette, Attorney-Adviser, (202–447–9859).

SUPPLEMENTARY INFORMATION:

Subpart A—General Information

Provisions included in the general information section apply to both time deposit and demand deposit State and Local Government Series securities. Changes from existing regulations are as follows:

(1) Section 344.0(b)—The definition of the term "government body" is expanded to include non-governmental bodies which hold funds subject to the arbitrage provisions of the Internal Revenue Code.

(2) Section 344.1(g)—The Department reserves the right to change provisions relating to issuance and redemption of securities when there are debt limit constraints.

Subpart B—Time Deposit Securities

Department of the Treasury Circular, Public Debt Series No. 3–72 (31 CFR, Part 344), pertains to an offering of time deposit Treasury securities issued to state and local government investors to enable these investors to satisfy yield restrictions in the Internal Revenue Code.

The major changes to this circular as contained in the revised regulations are as follows:

(1) Section 344.2(a)(1)—Certificates will be available for terms of 30 days to one year. This reduces the 45-day minimum heretofore provided.

(2) Section 344.2(a)(3)—The maximum term for Treasury bonds will be reduced to 30 years from 40 years.

(3) Section 344.2(c)(2)—All payments in connection with time deposit securities for which subscriptions are submitted after February 1, 1987, will be made by direct deposit (electronic funds transfer) to the investor's account at a financial institution.

(4) Section 344.3(b)—The 20-day notice of the intention to invest will be reduced to 15 calendar days. In addition, the subscriber may defer settlement up to seven calendar days after the date specified for issuance.

(5) Section 344.3(b)—A subscription may be amended on or before the proposed issue date for the purpose of changing the aggregate principal amount up or down by no more than ten percent, previously five percent, and changing the interest rate to any other rate, which does not exceed the maximum allowable rate, on the applicable table.

(6) Section 344.3(c)—Subscribers must certify that none of the proceeds submitted in payment is derived from the redemption before maturity of other securities of the State and Local Government Series.

(7) Section 344.4—The six-month penalty for failure to complete a subscription is modified to provide that the penalty applies if the failure to settle is due to a desire to take advantage of changes in the interest rate, but not if the change was necessitated by an adversity in the financing. Certification to this effect is required.

(8) Section 344.5(b)(2)—A minimum 15-calendar day notice will be required on early redemptions. This reduces the 20-day requirement currently imposed for most investments.

(9) Section 344.5(b)(3)(iii)—The calculation of penalties for early redemptions is clarified. Formulas for computing the penalties are provided in the Appendix.

Subpart C—Demand Deposit Securities

The Tax Reform Act of 1986 imposes arbitrage rebate requirements on issuers of tax-exempt bonds and directs the Treasury Department to modify its State and Local Government Series (SLGS) program to accommodate the new requirements and enable entities to invest qualifying funds into a Treasury money-market type investment vehicle. Accordingly, Treasury is expanding the program to include a new "demand deposit" security offering.

The major features of this offering include:

(1) Section 344.6(a)—The demand deposit securities will be issued in a minimum amount of $1,000 and any increment above that amount. The securities, defined as one-day certificates of indebtedness, will roll over each day until the day prior to redemption.

(2) Section 344.6(b)—Interest will be computed daily. The rate will be based on the weekly Federal Funds rate minus ¼ percent per annum, adjusted to produce a tax exempt equivalent rate, less administrative costs. Interest will be accrued and added to the principal daily.

(3) Section 344.7(a)—The securities will be issued upon a minimum three-day notice.

(4) Section 344.9(a)—The securities may be redeemed upon a minimum one-day notice.

General

This interim rule is not a major rule as defined in Executive Order 12291. Because no notice of proposed rule making is required for interim rules, the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 1167, does not apply. The rule reflects changes and a new offering made pursuant to the Tax Reform Act. Because the Act specifies that the changes and offering be effective January 1, 1987, the Agency has determined, pursuant to 5 U.S.C. 553 (b)(B) and (d)(3), that notice and public procedure and a delayed effective date are impracticable and contrary to the public interest.

List of Subjects in 31 CFR Part 344

Bonds, Government securities, Securities.

Dated: December 26, 1986.

Gerald Murphy,

Fiscal Assistant Secretary.

Part 344 of Title 31, Code of Federal Regulations, is revised as follows and issued as Department of the Treasury Circular, Public Debt Series No. 3–72, Third Revision:

PART 344—REGULATIONS GOVERNING UNITED STATES TREASURY CERTIFICATES OF INDEBTEDNESS—STATE AND LOCAL GOVERNMENT SERIES, UNITED STATES TREASURY NOTES—STATE AND LOCAL GOVERNMENT SERIES, AND UNITED STATES TREASURY BONDS—STATE AND LOCAL GOVERNMENT SERIES

Subpart A—General Information

Secs.

344.0 Offering of securities.
344.1 General provisions.

Subpart B—Time Deposit Securities

344.2 Description of securities.
344.3 Subscription for purchase.
344.4 Issue date and payment.
344.5 Redemption.

Subpart C—Demand Deposit Securities

344.6 Description of securities.
344.7 Subscription for purchase.
344.8 Issue date and payment.
344.9 Redemption.

Appendix—Formulas for Determining the Amount of Penalty for Early Redemption of Securities Under § 344.5(b)(3)(iii)

Authority: 31 U.S.C. 3101, *et seq.*; sec. 1301, Pub. L. 99–514, 100 Stat. 2857.

Subpart A—General Information

§ 344.0 Offering of securities.

(a) In order to provide issuers of state and local bonds described in section 103(a) of the Internal Revenue Code with investments tailored to their needs under Sections 141–150, the Secretary of the Treasury offers for sale the following State and Local Government Series securities:

(1) Time deposit securities

(i) United States Treasury Certificates of Indebtedness,

(ii United States Treasury Notes, and

(iii) United States Treasury Bonds.

(2) Demand deposit securities—United States Treasury Certificates of Indebtedness.

(b) The term "government body," as used in these regulations, refers to issuers of state or local bonds described in section 103(a), as well as to any other entity holding funds to which the yield restrictions in sections 141–150 or the arbitrage rebate requirements in section 148 or 143(g)(3) apply. This offering will continue until terminated by the Secretary of the Treasury.

§ 344.1 General provisions.

(a) *Regulations.* United States Treasury State and Local Government Series securities shall be subject to the general regulations with respect to United States securities, which are set forth in the Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), to the extent applicable. Copies of the circular may be obtained from the Bureau of the Public Debt, Department F, Washington, DC 20239–1200 or a Federal Reserve Bank or Branch.

(b) *Issuance.* The securities will be issued in book-entry form on the books of the Department of the Treasury, Bureau of the Public Debt, Washington, DC 20239–0001. Transfer of securities by sale, exchange, assignment or pledge, or otherwise will not be permitted.

(c) *Time/Demand Deposit Transfers.* Securities held under the time deposit system may not be transferred to the demand deposit system, and vice versa.

(d) *Fiscal agents.* Federal Reserve Banks and Branches, as fiscal agents of the United States, are authorized to perform such services as may be requested of them by the Secretary of the Treasury in connection with the purchase of, transactions involving, and redemption of the securities.

(e) *Authority of subscriber.* Where a commercial bank submits an initial or final subscription on behalf of a government body, it must certify that it is acting under the latter's specific authorization; ordinarily, evidence of such authority will not be required. Subscriptions submitted by an agent other than a commercial bank must be accompanied by evidence of the agent's authority to act. Such evidence must describe the nature and scope of the agent's authorization, the legal authority under which the agent was designated, and must relate by its terms to the investment action being undertaken. Subscriptions unsupported by such evidence will not be accepted.

(f) *Reservations.* Transaction requests, including requests for subscription and redemption, will not be accepted if unsigned, inappropriately completed, or not timely submitted. The Secretary of the Treasury reserves the right (1) to reject any application for the purchase of securities under this offering; (2) to refuse to issue any such securities in any case or any class(es) of cases; and (3) to revoke the issuance of any security, and to declare the subscriber ineligible thereafter to subscribe for securities under this offering, if any security is issued on the basis of an improper certification or other misrepresentation by the subscriber, if the Secretary deems such action to be in the public interest. Any of these actions shall be final. The authority of the Secretary to waive regulations under 31 CFR 306.126 applies to these regulations.

(g) *Debt limit contingency.* The terms and conditions of this offering, including

provisions relating to the acceptance of subscriptions and issuance of securities, the provisions relating to interest payments, redemptions, and rollovers, as well as notices relating thereto, are subject to change at any time that the Department of the Treasury finds that legislation affecting the public debt limit and the financing thereof may not be timely enacted. Announcement of such changes shall be provided by such means as the Treasury deems appropriate.

Subpart B—Time Deposit Securities

§ 344.2 Description of securities.

(a) *Terms*—(1) *Certificates of Indebtedness.* The certificates will be issued in a minimum of $1,000, or in any larger amount in multiples of $100, with maturity periods fixed, at the option of the government body, from 30 days up to one year, or for any intervening period.

(2) *Notes.* The notes will be issued in the minimum amount of $1,000, or in any larger amount in multiples of $100, with maturity periods fixed, at the option of the government body, from one year and one day up to and including 10 years, or for any intervening period.

(3) *Bonds.* The bonds will be issued in the minimum amount of $1,000, or in any larger amount in multiples of $100, with maturity periods fixed, at the option of the government body, from 10 years and one day up to and including 30 years, or for any intervening period.

(b) *Interest rate.* Each security shall bear such rate of interest as the government body shall designate, but the rate shall not exceed the maximum rate. The applicable maximum interest rates for each week are shown in tables which are available at Federal Reserve Banks and Branches on the first business day of that week. The applicable rate table for any subscription is the one in effect on the date the initial subscription is actually received during customary business hours by a Federal Reserve Bank or Branch, or if the initial subscription was mailed, the postmark date. The rates specified in the tables are one-eighth of one percent below the then current estimated Treasury borrowing rate for a security of comparable maturity.

(c) *Payment*—(1) *Interest computation and payment dates.* Interest on a certificate will be computed on an annual basis and will be paid at maturity with the principal. Interest on a note or bond will be paid semiannually on a schedule in which the first payment occurs within the first year and the final payment date coincides with its maturity date. (In the case of securities with an interest payment date of March 31, May 31, August 29, 30, and 31, October 31 or December 31, the alternate semiannual interest will be paid on September 30, November 30, February 28 or 29 (in a leap year), April 30, or June 30, respectively). If the first interest payment is less than six months from the date of issue, the government body may elect to receive the payment with the first full semiannual payment. Interest for other than a full period is computed on the basis of a 365-day or 366-day year (for certificates) or on the basis of the exact number of days in the half-year (for notes and bonds). See Appendix following 31 CFR 306.38 for rules regarding computation of interest.

(2) *Method of payment.* For securities for which subscriptions are submitted prior to February 1, 1987, payment will be made (i) by a direct credit to a Federal Reserve Bank or Branch for the account of the financial institution serving the investor; or (ii) by direct deposit for the owner's account at a financial institution; or (iii) by Treasury check; or (iv) in accordance with other prior arrangements made by the subscriber with the Bureau of the Public Debt. For securities for which subscriptions are submitted on or after February 1, 1987, payment will only be made by direct deposit for the owner's account at a financial institution designated by the owner. Provisions of § 357.26 on "Payments," as set forth in 31 CFR Part 357, shall apply to direct deposit payments made under this offering to the extent applicable.

§ 344.3 Subscription for purchase.

(a) *Subscription requirements.* Subscriptions for purchase of securities under this offering must be submitted to a Federal Reserve Bank or Branch. Subscriptions may be submitted in person, by mail, or by other carrier. All subscriptions submitted by mail, whether initial or final, must be sent by certified or registered mail. A subscription filed at a Federal Reserve Bank or Branch is accepted, subject to verification by the Bureau of the Public Debt.

(b) *Initial subscriptions.* An initial subscription, either on a Treasury form or in letter form, stating the principal amount to be invested and the issue date, must be received (or where mailed, must be postmarked) at least 15 calendar days before issue date. For example, if the securities are to be issued on March 16, the subscription must be postmarked no later than March 1. If the initial subscription is in letter form, it should read substantially as follows:

To: Federal Reserve Bank or Branch at _____

Pursuant to the provisions of Department of the Treasury Circular, Public Debt Series No. 3-72, current revision, the undersigned hereby subscribes for United States Treasury Time Deposit Securities—State and Local Government Series, to be issued as entries on the books of the Bureau of the Public Debt, Department of the Treasury, in the total amount and with the issue date shown below, which date is at least 15 calendar days after the date of this subscription:

Principal amount	Issue date
$.....	

The undersigned agrees that the final subscription, together with the remittance, will be submitted on or before the issue date.

_____

Tax I.D. Number

_____

(Name of State or Local Government Body or other entity eligible to purchase State and Local Government Series securities)

_____

(Date)

by _____

(Signature and Title)

The provisions set out in paragraph (e) of § 344.1, dealing with the authority of the subscriber to act on behalf of a government body, and in § 344.4, relating to the failure to complete a subscription, apply to initial subscriptions. An initial subscription may be amended on or before the issue date, with the following exceptions: (1) the issue date may not be changed to require issuance more than seven calendar days later than originally specified, and, if such change is made, a letter of explanation shall be furnished; (2) the principal amount may not be changed by more than the ten percent limitation set out in paragraph (c) of this section; and (3) an interest rate may not be changed to a rate that exceeds the maximum interest rate in the applicable table. No initial subscription will be required where a final subscription is received or postmarked at least 15 calendar days before the issue date. Such final subscription will be treated as the initial subscription for purposes of determining the applicable interest rate table (see § 344.2(b)), and may be amended on or before the issue date subject to the exceptions noted above.

(c) *Final subscriptions.* On or before the issue date, a final subscription (Form PD 4144) must be submitted to the same Federal Reserve Bank or Branch to which the initial subscription was

submitted. The final subscription must be for a total principal amount that is no more than ten percent above or below the amount specified in the initial subscription. The final subscription, dated and signed by an official authorized to make the purchase and showing the taxpayer identification number of the beneficial owner, must be accompanied by a copy of the initial subscription, where applicable. The various maturities, interest rates, and semiannual interest payment dates (in the case of notes and bonds), must be specified in the final subscription, as well as the title(s) of the designated official(s) authorized to request early redemption. Final subscriptions submitted for certificates, notes and bonds must separately itemize securities of each maturity and each interest rate. Authorization for the electronic credit (direct deposit) of interest and principal payments with a financial organization must accompany the final subscription. The final subscription must contain a certification by the subscriber that, as of the date of investment:

(1) The total investment consists only of proceeds (or amounts treated as proceeds) which are subject to yield restrictions under sections 141–150 of the Internal Revenue Code during the entire period of investment.

(2) The total investment is not less than the proceeds described in paragraph (c)(1) of this section except for—

(i) An amount not to exceed $100, and

(ii) Amounts required for payment due less than 30 days from the date of issue.

(3) None of the proceeds submitted in payment is derived from the redemption before maturity of other securities of the State and Local Government Series.

Where proceeds are subject to yield restrictions for a limited period of time, under paragraph (c)(1) of this section, no investment of such proceeds beyond such period may be made. For example, if a reserve fund of a refunding issue is subject to yield restrictions for a period of four years, the securities purchased as an investment of the reserve fund may not have a maturity longer than four years. With respect to obligations described in section 103 issued after January 31, 1987, paragraph (c)(2) of this section is satisfied only if on the date of investment, all the proceeds of the issue which are subject to yield restrictions are invested in State and Local Government Series securities. Paragraph (c)(2) of this section does not apply to purpose investments, such as mortgage notes or student loan obligations. See § 344.1(f) as to improper certifications.

§ 344.4 Issue date and payment.

(a) The subscriber shall fix the issue date of each security in the initial subscription. The issue date may not exceed by more than 60 calendar days either the date of receipt of the initial subscription at the Federal Reserve Bank or Branch to which it was submitted or, where mailed, the postmark date thereof. Full payment for each subscription must be available in an account for debit by a Federal Reserve Bank or Branch on or before the date of issue. Any subscriber which fails to complete an initial or final subscription shall be ineligible thereafter to subscribe for securities under this offering for a period of six months, beginning on the date the subscription is withdrawn or the proposed issue date, which ever occurs first, unless the Commissioner of the Public Debt determines that such failure is due to circumstances not foreseen or contemplated by the subscriber at time of subscription. Where failure to settle is due to adversity in the financing, reasonable accommodation will be made, provided the subscriber submits a certified statement to the Commissioner of the Bureau of the Public Debt with respect to those circumstances. The penalty will apply in other instances, for example, where failure to settle is due to a subscriber attempting to take advantage of changes in the interest rate.

(b) A subscriber may cancel the issuance of a security within 25 calendar days of the issue date, in which event the purchase price, without interest, will be refunded. No substitute subscription therefor will be accepted for a period of six months from the date of cancellation.

§ 344.5 Redemption.

(a) *General.* A security may not be called for redemption by the Secretary of the Treasury prior to maturity. Upon the maturity of a security, the Treasury will make payment of the principal amount and interest to the owner thereof.

(b) *Before maturity*—(1) *In general.* A security may be redeemed at the owner's option no earlier than 25 calendar days after the issue date in the case of a certificate and one year after the issue date in the case of a note or bond.

(2) *Notice.* Notice of redemption prior to maturity must be received by the Bureau of the Public Debt, Department L, Washington, DC 20239–0001. The notice must be provided, by letter or wire, by the official(s) authorized to redeem the securities, as shown on the final subscription form. The notice must show the subscription number and the maturities of the securities to be redeemed. This notice must be received no less than 15 days before the requested redemption date. However, owners are encouraged to provide as much notice of redemption as possible to assure that payment can be timely made.

(3) *Redemption proceeds—subscriptions after December 27, 1976.* For securities subscribed to after December 27, 1976, the amount of the redemption proceeds is calculated as follows:

(i) *Interest.* Interest for the entire period the security was outstanding shall be recalculated on the basis of the lesser of (A) the original interest rate at which the security was issued, or (B) the interest rate that would have applied to the initial subscription had the term for the security been for the shorter period. If a note or bond is redeemed before maturity on a date other than an interest payment date, no interest will be paid for the fractional interest period since the last interest payment date.

(ii) *Overpayment of interest.* If there have been overpayments of interest, as determined under paragraph (b)(3)(i) of this section, there shall be deducted from the redemption proceeds the aggregate amount of such overpayments, plus interest, compounded semiannually, thereon from the date of each overpayment to the date of redemption. The interest rate to be used in calculating the overpayment shall be one-eighth of 1 percent above the maximum rate that would have applied to the initial subscription had the term of the security been for the shorter period.

(iii) *Penalty.* A penalty shall be deducted from the redemption proceeds in all cases where the current borrowing rate of the Department of the Treasury for the remaining period to original maturity of the security prematurely redeemed exceeds the rate of interest originally fixed for such security. The amount of the penalty shall be the present value of the future increased borrowing costs to the Treasury. The annual increased borrowing cost for each interest period is determined by multiplying the principal by the difference between the two rates. For notes and bonds, the increased borrowing cost for each remaining interest period to original maturity is determined by dividing the annual cost by two. For certificates, the increased borrowing cost for the remaining period

to original maturity is determined by multiplying the annual cost by the number of days remaining until original maturity divided by the number of days in the calendar year. Present value shall be determined by using the current borrowing rate as the discount factor. The term "current borrowing rate" means the applicable rate shown in the table of maximum interest rates payable on United States Treasury securities—State and Local Government Series for the week of the early redemption date, plus one-eighth of 1 percentage point. Where redemption is requested as of a date less than 30 calendar days before the original maturity date, such applicable rate is the rate shown for a security with a maturity of 30 days. The amount of the penalty for bonds, notes and certificates of indebtedness can be determined by use of the formulas set forth in the Appendix.

(4) *Redemption proceeds—subscriptions on or before December 27, 1976.*

(i) For securities subscribed for on or before December 27, 1976, the amount of the redemption proceeds is calculated under this subparagraph.

(ii) The interest for the entire period the security was outstanding shall be calculated on the basis of the lesser of the original interest rate at which the security was issued, or an adjusted interest rate reflecting both the shorter period during which the security was actually outstanding and a penalty. The adjusted interest rate is the Treasury rate which would have been in effect on the date of issuance for a marketable Treasury certificate, note, or bond maturing on the quarterly maturity date prior to redemption (in the case of certificates), or on the semiannual maturity period prior to redemption (in the case of notes and bonds), reduced in either case by a penalty which shall be the lesser of one-eighth of one percent times the number of months from the date of issuance to original maturity, divided by the number of full months elapsed from the date of issue to redemption, or one-fourth of one percent. There shall be deducted from the redemption proceeds, if necessary, any overpayment of interest resulting from previous payments made at a higher rate based on the original longer period to maturity.

Subpart C—Demand Deposit Securities

§ 344.6 Description of securities.

(a) *Terms.* The securities are defined as one-day certificates of indebtedness. The securities will be issued in a minimum of $1,000 and any increment above that amount. Each subscription will be established as a unique account. Securities will be automatically rolled over each day unless redemption is requested.

(b) *Interest rate.* Each security shall bear a variable rate of interest based on an adjustment of the Federal Funds rate published weekly in the Federal Reserve Board's publication, H.15. A new rate, to be effective each Monday, will be shown in the table available at Federal Reserve Banks and Branches on the first business day of the week. Interest will be accrued and added to principal daily. Interest earned will be calculated by multiplying the interest rate by the amount of the outstanding principal daily, including the issue date but not the redemption date, and dividing by the number of days in the year. The interest rate is determined by the following formula:

$$\text{Annual Rate} = \left[\frac{\left(\text{Federal Funds Rate} - \text{1/4 percent per annum}\right)\left(\text{1-estimated average marginal tax rate of purchasers of short-term tax exempt bonds}\right)}{360/Y} - \text{Treasury administrative costs} \right]$$

where

Y=365 if year following date of issue does not contain a Leap Day and 366 if it does contain a Leap Day.

Information as to the estimated average marginal tax rate and costs for administering the Demand Deposit State and Local Government securities program, both to be determined by Treasury from time to time, will be published in a separate notice in the **Federal Register.**

(c) *Payment.* Interest earned on the securities will be added to the principal and will be rolled over daily until redemption. The Department reserves the right, under debt limit constraints, to pay accrued interest rather than add such interest to the principal balance.

§ 344.7 Subscription for purchase.

(a) *Subscription requirements.* Subscriptions for purchase of securities under this offering must be submitted to a Federal Reserve Bank or Branch. Subscriptions must be submitted on the designated Treasury form (Form PD 5237), must specify the principal amount to be invested and the issue date, and must be signed by an official authorized to make the purchase. The Federal Reserve Bank or Branch must receive the subscription by 1:00 p.m., Eastern time, at least three business days before the issue date. The principal amount to be invested may be changed without penalty so long as the notification of change is received by the Federal Reserve Bank or Branch by 1:00 p.m., Eastern time, at least one business day before the issue date.

(b) *Certification.* By completing the subscription form, subscribers certify to the following:

(1) That the total investment consists only of gross proceeds of a tax-exempt bond issue to which section 148(f) or 143(g)(3) of the Internal Revenue Code applies;

(2) That no portion of the investment consists of gross proceeds of an advance refunding issue to be used to discharge a prior issue;

(3) That no portion of the issue is being issued for the principal purpose of investing in one-day certificates of indebtedness;

(4) That all of the gross proceeds of the issue received on the date of issue were (or will be) invested on that date in one-day certificates of indebtedness; and

(5) That all of the gross proceeds of the issue, except gross proceeds described in paragraphs (b)(2) and (4) of this section and in exceptions one through six below, have and will be invested in one-day certificates of indebtedness within four business days of the receipt thereof.

(i) *Exception (1).* Gross proceeds invested in a bona fide debt service fund if the issuer reasonably expects that the gross earnings on such fund for the bond year will be less than $100,000.

(ii) *Exception (2).* Gross proceeds which are invested in tax-exempt bonds within two business days of the receipt thereof. Such gross proceeds must be expended for the purpose of the issue within one business day of the date they cease to be invested in tax-exempt bonds.

(iii) *Exception (3).* Gross proceeds which will not be gross proceeds of the issue for more than seven business days.

(iv) *Exception (4).* Gross proceeds invested in obligations the earnings on which are not subject to rebate under section 148 or 143(g)(3) (whichever applies).

(v) *Exception (5).* Gross proceeds not described in exceptions one through four if the total amount of such gross proceeds is less than $1,000.

(vi) *Exception (6).* Gross proceeds which are not invested in one-day certificates of indebtedness due to an inadvertent error.

See § 344.1(f) as to improper certifications.

§ 344.8 Issue date and payment.

The subscriber shall fix the issue date on the subscription, the issue date to be at least three business days after receipt of the subscription. Full payment for each subscription must be available in an account for debit by a Federal Reserve Bank or Branch on or before the date of issue. Any subscriber which fails to settle a subscription shall be ineligible thereafter to subscribe for securities under this offering for a period of six months, unless the Commissioner of the Public Debt determines that such failure is due to circumstances not foreseen or contemplated by the subscriber at time of subscription. Where failure to settle is due to adversity in the financing, reasonable accommodation will be made, provided the subscriber submits a certified statement to the Commissioner of the Public Debt with respect to the circumstances.

§ 344.9 Redemption.

(a) *General.* A security will be redeemed upon receipt of a request for redemption not less than one business day prior to redemption. Partial redemptions may be requested; however, an account balance of less than $1,000.00 will be redeemed in total. Payment will be made by crediting an account maintained at the Federal Reserve Bank or Branch by the financial institution servicing the subscriber.

(b) *Notice.* Notice of redemption must be received by a Federal Reserve Bank or Branch by 1:00 p.m., Eastern time, one business day prior to the requested redemption date. The notice must be provided on the designated Treasury redemption form (Form PD 5238) and must be signed by an official(s) authorized to redeem the securities.

(c) *Certification.* By completing the redemption form, subscribers certify to the fact that any amounts requested for redemption will be expended within one day of receipt thereof for the purpose of the tax-exempt bond issue used to fund the investment. The certification shall not apply if the administrative costs increase by 25 or more basis points. In such case, the securities may be redeemed within 30 days of notice of the increased costs.

Appendix—Formulas for Determining the Amount of Penalty for Early Redemption of Securities Under § 344.5(b)(3)(iii).

The amount of the penalty for bonds and notes can be determined through use of the following formula:

$$P = \frac{\left(\frac{b}{2}\right)\left(\frac{r}{s}\right) + \left(\frac{b}{2}\right)(a)}{1 + \left(\frac{r}{s}\right)\left(\frac{i}{2}\right)},$$

where

P = penalty

b = increased annual borrowing cost (i.e., principal multiplied by the excess of the current borrowing rate for the period from redemption to original maturity of note or bond over the rate for the security)

r = number of days from redemption to beginning of next semiannual interest period

s = number of days in current semiannual period

i = current borrowing rate for period from redemption to maturity (expressed in decimals)

n = number of remaining full semiannual periods to the original maturity date

$$a = \frac{\left(1 - v^n\right)}{\frac{i}{2}}$$

$$v^n = \frac{1}{\left(1 + \frac{i}{2}\right)^n}$$

The application of this formula may be illustrated by the following example:

(1) Assume that a $600,000 note is issued on July 1, 1985, to mature on July 1, 1995. Interest is payable at a rate of 8% on January 1 and July 1.

(2) Assume that the note is redeemed on February 1, 1989, and that the current borrowing rate for Treasury at that time for the remaining period of 6 years and 150 days is 11%.

(3) The increased annual borrowing cost is $18,000. ($600,000) × (11% − 8%).

(4) The penalty is computed as follows:

$$P = \frac{\left(\frac{\$18,000}{2}\right)\left(\frac{150}{181}\right) + \left(\frac{\$18,000}{2}\right)(a)}{1 + \left(\frac{150}{181}\right)\left(\frac{.11}{2}\right)} =$$

$$\frac{\$7,458.56 + (\$9,000)(a)}{1.045580111} =$$

$$\frac{\$7,458.56 + (\$9,000)\left(\frac{1 - \frac{1}{(1 + \frac{.11}{2})^{12}}}{\frac{.11}{2}}\right)}{1.045580111}$$

$$\frac{\$7,458.56 + (\$9,000)(8.618517849)}{1.045580111} =$$

$$\frac{\$7,458.56 + \$77,566.66}{1.045580111} =$$

$$\$81,318.71$$

The amount of the penalty for certificates can be determined through use of the following formula:

$$P = \frac{(b)\left(\frac{r}{s}\right)}{1 + \frac{r}{s}(i)},$$

where

P=penalty
b=increased borrowing cost for full period
r=number of days from redemption date to original maturity date
s=days in current annual period (365 or 366)
i=annual interest rate expressed in decimals (discount factor)

The application of this formula may be illustrated by the following example:

(1) Assume that a $50,000 certificate is issued on March 1, 1987, to mature on November 1, 1987. Interest is payable at a rate of 10%.

(2) Assume that the certificate is redeemed on July 1, 1987, and that the current borrowing cost to Treasury for the 123-day period from July 1, 1987 to November 1, 1987 is 11.8%.

(3) The increased borrowing cost is $900. ($50,000×(11.8%−10%).

(4) The penalty is computed as follows:

$$P = \frac{\$900\left(\frac{123}{365}\right)}{1 + \left(\frac{123}{365}\right)(.118)} =$$

$$\frac{303.29}{1.039764384} =$$

$$\$291.69$$

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Wednesday,
December 31, 1986

Part V

Department of Agriculture

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities; Final Rule

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Financing of Commercial Sales of Agricultural Commodities; Public Law 480 Title I Regulations

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises that portion of the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480, 83rd Cong.) which is set forth in §§ 17.1 through 17.8 and 17.16 of Part 17 of Title 7 of the Code of Federal Regulations. The rule incorporates certain standard provisions in the purchase authorization and the provisions of "General Modification No. 1 to Appendix A and Appendix B of the Financing Regulations," changes the definition of "time of sale" for commodities purchased under the terms of an Invitation for Bids, and reflects the transfer of authority for the administration of the Pub. L. 480, Title I program from the Office of the General Sales Manager to the Foreign Agricultural Service. The rule also includes relevant provisions of the interim rule published January 23, 1985 (50 FR 2949) and adopted as a final rule January 17, 1986 (51 FR 2471) which provided that the Commodity Credit Corporation may finance ocean freight charges on foreign flag vessels for the carriage of commodities purchased under the program. Finally, the rule deletes obsolete provisions, reorganizes the regulations in a more logical order, revises many sections for clarity, and makes a number of minor editorial corrections. This revision will make the regulations clearer which could reduce the costs of the program by encouraging more commodity suppliers to participate.

EFFECTIVE DATE: January 30, 1987. (See Supplementary Information).

FOR FURTHER INFORMATION CONTACT: Robert S. Simpson, Director, P.L. 480 Operations Division, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250, Telephone: (202) 447–3664.

SUPPLEMENTARY INFORMATION: On January 31, 1984, the Foreign Agricultural Service (FAS) published a proposed rule (49 FR 3866) to amend the regulations governing the financing of the sale and exportation of agricultural commodities made available under the Act.

Two comments were received endorsing the proposed rule; one comment from a banking institution requested that § 17.8(c)(5) be amended to clarify whether CCC would demand a refund from a banking institution of commissions paid in violation of § 17.8(c) (2) and (3).

Section 17.15(b)(3) of the regulations, now § 17.20(b)(3), sufficiently states the possible exposure of a banking institution in the event commissions are paid that are not eligible for financing. No further clarification is deemed necessary. Under this regulation, a banking institution would only be responsible for a refund if it honors an ineligible commission when disclosed by required documents other than Form CCC–329.

On January 23, 1985, FAS published an interim rule (50 FR 2949), adopted as a final rule January 17, 1986 (51 FR 2471), amending the regulations to provide that the cost of ocean transportation on foreign flag vessels would be financed by CCC when, and to the extent, specifically provided in the applicable purchase authorization. This final rule reflects those provisions in new §§ 17.1, 17.7 and 17.12.

Additionally, § 17.4(a) has been amended to reflect the fact that use of Form 480–A, "Application for Purchase Authorization," has been discontinued. To request that a purchase authorization be issued, the importing country, generally through its Embassy in Washington, D.C., now sends a letter to the P.L. 480 Operations Division.

The final rule includes changes to § 17.6(b)(4) which did not appear in the proposed rule. However, these provisions concern the criteria for approval of commodity awards and are unchanged from provisions that have appeared in purchase authorizations for all commodities since May 15, 1984.

"General Modification No. 1 to Appendix A and Appendix B of the Financing Regulations" will be withdrawn on the effective date of this final rule, as its provisions are now contained in the text of the regulations.

These regulations will apply to purchase authorizations issued on or after January 30, 1987.

This action has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major." It has been determined that this proposed revision will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, State or local government agencies or geographic regions; and will not have an adverse effect 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.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the rule involves foreign affairs functions of the United States and therefore neither 5 U.S.C. 553 nor any other provision of law requires publication of a notice of proposed rulemaking with respect to the subject matter of this rule.

Information collection requirements contained in this regulation (§§ 17.5(c), 17.7(c), 17.10(a), 17.10(e), and 17.12(a)) have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned OMB control number 0551–0005. Recordkeeping requirements contained in redesignated § 17.22 were included under OMB control number 0551–0005.

Sections affected by this revision cover general information; definitions of terms; eligible commodities; purchase authorizations and subauthorizations; approval of purchasing agents and shipping agents; contracts between commodity suppliers and importers; eligibility of suppliers and selling agents; fees, discounts, commissions, and brand names; notice of sale procedures for commodities; commodity price provisions; reports required from suppliers; refunds to CCC by the participant; and ASCS offices.

List of Subjects in 7 CFR Part 17

Agricultural commodities, Exports, Finance, Maritime carriers.

Accordingly, 7 CFR Part 17, Subpart A, is amended as follows:

PART 17—[AMENDED]

1. The authority citation for Part 17 is revised to read as follows:

Authority: Secs. 101–115, Pub. L. 480, 83rd Cong., as amended, 68 Stat. 455 (7 U.S.C. 1701 *et seq.*); E.O. 12220, 45 FR 44245.

2. The table of contents is revised to read as follows:

Sec.

17.1 General.

17.2 Definition of terms.

Sec.
17.3 Eligible commodities.
17.4 Purchase authorizations.
17.5 Approval of purchasing and shipping agents.
17.6 Contracts between commodity suppliers and importers.
17.7 Eligibility of suppliers and selling agents.
17.8 Fees, discounts, commissions, brand names.
17.9 Notice of sale procedures (tobacco and cotton).
17.10 Notice of sale procedures (commodities other than tobacco and cotton).
17.11 Commodity price provisions.
17.12 Reports required from suppliers of commodities and ocean transportation.
17.13 Refund to CCC by the participant for failure to comply.
17.14 Ocean transportation.
17.15 Letter of commitment method of financing.
17.16 Reimbursement method of financing.
17.17 Adjustment refunds and insurance.
17.18 Documentation.
17.19 Documents in support of drafts drawn on CCC by banking institutions.
17.20 Responsibilities of banking institutions for transactions under letters of commitment.
17.21 ASCS offices.
17.22 Supplier's records.
17.23 Effective date.

§§ 17.9–17.18 [Redesignated as §§ 17.14–17.23]

3. Sections 17.9–17.18 are redesignated as §§ 17.14–17.23, respectively.

4. Sections 17.1–17.5 and §§ 17.7–17.8 are revised, § 17.6(a)–(g) are revised, § 17.6(h)–(j) are removed, and §§ 17.9–17.13 are added as follows:

§ 17.1 General.

(a) *What this subpart covers.* This subpart contains the regulations governing the financing of the sale and exportation of agricultural commodities by the Commodity Credit Corporation, through private trade channels to the maximum extent practicable, under the authority of Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (hereinafter called "the Act").

(b) *Agricultural Commodities Agreements.* (1) Under the Act, the Government of the United States enters into Agricultural Commodities Agreements with governments of friendly foreign countries or with private trade entities. These agreements cover financing of the sale and exportation of agricultural commodities, including certain ocean transportation costs.

(2)(i) Government-to-government Agricultural Commodities Agreements may provide for (A) sales for dollars on credit terms, (B) sales for foreign currencies on credit terms which permit conversion to dollars, and (C) sales for foreign currencies.

(ii) Agreements with private trade entities are limited to sales for dollars on credit terms.

(c) *Purchase authorizations.* These regulations cover, among other things, the issuance by the General Sales Manager of purchase authorizations which authorize the participant to (1) purchase agricultural commodities and (2) procure ocean transportation therefor.

(d) *Financing.* Following issuance of a purchase authorization, and on application, the Controller, Commodity Credit Corporation, will issue letters of commitment to banking institutions designated by the participant and acceptable to CCC, unless the participant elects to procure the commodities under the reimbursement method of financing. The cost of ocean freight or ocean freight differential will be financed by CCC only when specifically provided for in the purchase authorization.

(1) Under the letter of commitment method of financing, the U.S. supplier of agricultural commodities will receive payment as provided in the regulations in this subpart under irrevocable letters of credit issued, confirmed or advised by a banking institution for the commodities and, when authorized in the purchase authorization and included as a part of the commodity cost, for the ocean freight or the ocean freight differential, and marine insurance.

(2) Notwithstanding any other provision of these regulations, if authorized by the purchase authorization, ocean freight or ocean freight differential shall be financed by CCC under the letter of commitment method of financing in cases where ocean freight is not included as a part of the commodity cost, subject to the applicable provisions of these regulations and such other provisions as may be specified in the purchase authorization. In such case, the supplier of ocean freight will receive payment for ocean freight or ocean freight differential as provided in these regulations and the purchase authorization under irrevocable letters of credit issued, confirmed or advised by a banking institution.

(3) Under the reimbursement method of financing, the U.S. supplier will obtain payment from the participant or its assignee as provided in the regulations in this subpart for the cost of commodities and, when authorized in the purchase authorization and included as a part of the commodity cost, for the ocean freight or the ocean freight differential, and marine insurance. When ocean freight or ocean freight differential is approved for financing on Form CCC-106 and is to be financed separately from the commodity cost, the supplier of ocean transportation will obtain payment from the participant or its assignee.

(4) To the extent provided in the regulations in this subpart, CCC will reimburse banking institutions for payments made under letters of commitment and CCC will reimburse the participant or its assignee for ocean freight or ocean freight differential financed separately from the commodity and for the commodities procured under the reimbursement method of financing.

(e) *Advice of amount financed.* Under the letter of commitment method of financing, the banking institutions will forward documents and advice of the amount financed by CCC to the approved applicant or to the bank or agency authorized by the approved applicant to open related letters of credit. Under the reimbursement method of financing, CCC will forward advice of payment to the participant or its assignee.

(f) Where information is available. The Foreign Agricultural Service issues a press release whenever a purchase authorization is issued. General information about purchase authorizations and operations under these regulations is available from the Director, P.L. 480 Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250. Information about financing operations under these regulations is available from the Controller, Commodity Credit Corporation, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. A copy of each press release is made available to the Small Business Administration to assist small business firms to have an adequate and a fair opportunity to participate as suppliers.

§ 17.2 Definition of terms.

Terms used in the regulations in this subpart are defined or identified as follows, subject to amplification in subsequent sections:

(a) *Terms relating to the United States, its agencies and officials.*

AMS means the Agricultural Marketing Service, U.S. Department of Agriculture.

ASCS means the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

ASCS offices means the ASCS offices listed in § 17.21 and any other offices or agencies which may succeed to the functions of these offices.

CCC means the Commodity Credit Corporation, U.S. Department of Agriculture.

Controller means the Controller, Commodity Credit Corporation, or the Controller's designee.

FAS means the Foreign Agricultural Service, U.S. Department of Agriculture.

FGIS means the Federal Grain Inspection Service, U.S. Department of Agriculture.

General Sales Manager and *GSM* mean the General Sales Manager, FAS, or the General Sales Manager's designee.

Secretary means the Secretary of Agriculture of the United States, or the Secretary's designee.

USDA means the U.S. Department of Agriculture and includes all or any of the agencies mentioned in this paragraph (a).

United States means the 50 States, the District of Columbia, and Puerto Rico.

(b) *Terms relating to ocean transportation.*

Dry bulk carrier means a non-common carrier vessel, other than a tanker, commonly referred to as a "tramp." Rates are negotiated covering the movement of a specific quantity of a specific commodity, at a specific time from a specific port or ports to a specific destination port or ports.

Dry cargo liners and *liners* are interchangeable terms meaning regularly scheduled vessels on specific trade routes.

Form CCC-106 means the various forms entitled "Advice of Vessel Approval," and refers to either the Form CCC-106-1 (Supplier of Commodity); Form CCC-106-2 (Ocean Carrier); Form CCC-106-3 (Cotton); or any or all of them, as applicable. Colors of the original forms are: Form CCC-106-1, yellow; Form CCC 106-2, blue; Form CCC-106-3, white.

Notice of arrival means a written notice or copy of a cablegram in accordance with § 17.14(f) stating that the vessel has arrived at the first port of discharge.

Ocean bill of lading means

(1) *In the case of cargo carried on a vessel other than LASH or Seabee barges:* An "on-board" bill of lading, or a bill of lading with an "on-board" endorsement, which is dated and signed or initialed on behalf of the carrier, or

(2) *In the case of cargo carried in a LASH or Seabee barge:*

(i) For the purpose of financing commodity price, an "on-board" bill of lading showing the date the commodity was loaded on board barges, which is dated and signed or initialed on behalf of the carrier, or a bill of lading or a LASH or Seabee barge bill of lading with an "on-board barge" endorsement which is dated and signed or initialed on behalf of the carrier.

(ii) For the purpose of financing ocean freight or ocean freight differential, an "on-board" bill of lading which is dated and signed or initialed on behalf of the carrier indicating that the barge containing the cargo was placed aboard the vessel named in the Form CCC-106 not later than eight (8) running days after the last LASH or Seabee barge loading date (contract layday) specified in the Form CCC-106. A bill of lading or a LASH or Seabee barge bill of lading with an "on-board ocean vessel" endorsement which is dated and signed or initialed on behalf of the carrier indicating that the barge containing the cargo was placed aboard the vessel named in the Form CCC-106 not later than eight (8) running days after the last LASH or Seabee barge loading date (contract layday) specified in the Form CCC-106.

(3) Documentary requirements for a copy of an "ocean bill of lading" refer to a non-negotiable copy thereof.

Ocean transportation means and is interchangeable with the term "ocean freight".

Tanker means a vessel which is designed to carry full cargoes of liquids. Because of compartmentation, tankers can carry a combination of cargoes, including bulk grain. Rates are negotiated in the same manner as with dry bulk carriers.

(c) *Other terms.*

Affiliate and *associated company* mean any legal entity which owns or controls, or is owned or controlled by, another legal entity. For a corporation, ownership of the voting stock is the controlling criterion. A legal entity is considered to own or control a second legal entity if—

(i) The legal entity owns an interest of 50 percent or more in the second legal entity, or

(ii) The legal entity and one or more other legal entities, in which it owns an interest of 50 percent or more, together own an interest of 50 percent or more in the second legal entity, or

(iii) The legal entity owns an interest of 50 percent or more in another legal entity which in turn owns an interest of 50 percent or more in the second legal entity.

Approved applicant means the bank in the importing country, or other agency acceptable to CCC, designated by the participant and named in a letter of commitment issued to a banking institution. This term includes any agent authorized to act on behalf of the approved applicant.

Banking institution means a banking institution organized under the laws of the United States, any State, or the District of Columbia.

Commodity means an agricultural commodity produced in the United States, or product thereof produced in the United States, as specified in the applicable purchase authorization.

Copy means a photocopy or other type of copy of an original document showing all data shown on the original, including signature or the name of the person signing the original, or, if the signature or name is not shown on the copy, a statement that the original was signed.

Delivery means the transfer to or for the account of an importer of custody and right of possession of the commodity at U.S. ports or Canadian transshipment points in accordance with the delivery terms of the contract and purchase authorization. For purposes of financing, delivery is deemed to occur as of the on-board date shown on the ocean bill of lading.

Destination country means the foreign country to which the commodity is exported.

Foreign currency and *local currency* are interchangeable terms and mean the currency of the importing country.

Foreign currency sale means a sale for the currency of the importing country.

Form CCC-329 means the signed original of Form CCC-329, "Supplier's Certificate."

Importer means the person which contracts with the supplier for the importation of the commodity. The importer may be the participant or any person to which a participant has issued a subauthorization.

Importing country means any nation with which an agreement has been signed under the Act.

Invitation for bids and *IFB* mean a publicly advertised request for offers.

Legal entity includes, but is not limited to, an individual (except that an individual and his or her spouse and their minor children are considered as one legal entity), partnership, association, company, corporation and trust.

Letter of credit means an irrevocable commercial letter of credit issued, confirmed, or advised by a banking institution on behalf of an approved applicant.

Long-term credit sale is the collective term used to denote either or both of the following: (i) Sales to an importing country or a private trade entity for dollars on credit terms or (ii) sales to an importing country for local currency on

credit terms and on terms which permit conversion to dollars.

Participant is the collective term used to denote the importing country or the private trade entity with which an agreement has been negotiated under the Act.

Person means an individual or other legal entity.

Purchase authorization means Form FAS–480 (Commodity), "Authorization to Purchase Agricultural Commodities," issued to a participant under these regulations.

Purchasing agent means any person engaged by a participant to procure agricultural commodities.

Private trade entity means the individual or other nongovernmental legal entity with which an agreement has been negotiated under the Act.

Selling agent means any person who operates as a bona fide representative for the supplier of the commodity and who is not employed by or otherwise connected with the importer or the importing country.

Shipping agent means any person engaged by a participant to arrange ocean transportation.

Ships broker means any person engaged by a supplier of ocean transportation to arrange employment of vessels.

Supplier means any person who sells a commodity to an importer under the terms of a purchase authorization, or who sells ocean transportation to an importer or supplier of the commodity under the terms of a purchase authorization.

§ 17.3 Eligible commodities.

(a) *General.* Commodities eligible for financing are those commodities determined by the Secretary to be available for disposition under the Act.

(b) *Commodity description and specification.* The commodity and quantity thereof to be financed shall be as described and specified in the relevant purchase authorization.

(c) *Cotton textiles.*

(1) Except as provided in paragraph (c)(2) of this section, financing of textiles under these regulations is limited to cotton yarns and fabrics processed up to and including the dyed and printed state, and preshrinking. Any processing of such yarns and fabrics beyond this stage will be at the expense of the participant.

(2) Purchase authorizations may permit cotton textiles processed beyond the stage described in paragraph (c)(1) of this section to be purchased, but the maximum financing by CCC is limited to the equivalent value of the cotton yarns and fabrics described in paragraph (c)(1) of this section, contained in the textiles, plus eligible ocean transportation costs.

(3) Financing is available only for textiles manufactured entirely of U.S. cotton in the United States. The General Sales Manager will not issue a purchase authorization for a textile of a specification not produced in the United States, but may issue a purchase authorization for the financing of a textile produced in the United States which has a specification reasonably close to that requested by the participant.

§ 17.4 Purchase authorizations.

(a) *Request.* For each purchase authorization, the participant shall submit to the General Sales Manager a written request for issuance, specifying the commodity and including any other information required by the General Sales Manager.

(b) *Issuance of purchase authorization.* When the request has been approved by the General Sales Manager, the GSM shall issue a purchase authorization to the participant. The form used is Form FAS–480 (Commodity), "Authorization to Purchase Agricultural Commodities."

(c) *Purchase authorizations.* Each purchase authorization includes the following information:

(1) The commodity to be purchased, approximate quantity and maximum dollar value;

(2) Contracting requirements in addition to or in lieu of those in Appendix A of this subpart, if any;

(3) The contracting period, during which suppliers and importers must enter into contracts; and the delivery period, during which the commodity must be delivered;

(4) The terms of delivery to the importer;

(5) Documentation required in support of drafts presented to banks by suppliers in addition to or in lieu of the documentation specified in Appendix B of this subpart;

(6) Provisions relating to payment to CCC, if applicable;

(7) The ASCS office which administers the financing operation on behalf of CCC;

(8) The method of financing;

(9) Any limitation relating to financing by CCC in addition to or in lieu of those specified in these regulations;

(10) Authorization to procure ocean transportation, and provisions relating to the financing of ocean freight or ocean freight differential, as applicable;

(11) Any other provisions considered necessary by the General Sales Manager.

(d) *Applicability of this subpart.* In addition to the provisions of a particular purchase authorization, each purchase authorization, unless otherwise provided, is subject to the provisions of this subpart to the same extent as if the provisions were fully set forth in the purchase authorization.

(e) *Modification or revocation.* The General Sales Manager reserves the right at any time for any reason or cause whatsoever to supplement, modify, or revoke any purchase authorization, including the termination of deliveries, if it is determined to be in the interest of the U.S. Government.CCC shall reimburse suppliers who would otherwise be entitled to be financed by CCC for costs which were incurred as a result of such action by the General Sales Manager in connection with firm sales or shipping contracts, and which were not otherwise recovered by the supplier after a reasonable effort to minimize such costs: *Provided, however,* That such reimbursement shall not be made to a supplier if the General Sales Manager determines that the GSM's action was taken because the supplier failed to comply with the requirements of the regulations in this subpart or the applicable purchase authorization; *Provided further,* That reimbursement to suppliers of ocean transportation shall not exceed the ocean freight differential when the purchase authorization provides only for financing the differential.

(f) *Extension of delivery period in a purchase authorization.* The General Sales Manager will consider a request for extension of the delivery period in a purchase authorization only if the participant submits the request. The request should be submitted as soon as the participant knows that delivery may not be completed, or was not completed, within the period specified in the purchase authorization. The request for extension must establish to the satisfaction of the GSM that failure to complete delivery was due to a cause other than the fault or negligence of the importer or the supplier. The GSM may also approve the request for extension if the GSM determines that an extension would be in the interest of the U.S. Government.

(g) *Subauthorizations.* (1) The participant may issue subauthorizations to importers consistent with the terms of the applicable purchase authorization. The participant, in subauthorizing, shall instruct importers to use the applicable purchase authorization number in placing orders, and shall specify to importers all the provisions of the

applicable purchase authorization which apply to the subauthorization.

(2) Each importer granted a subauthorization shall inform the supplier that the transaction is to be financed under the provisions of the regulations in this subpart. The importer shall also provide the supplier with the applicable purchase authorization number. The importer shall inform the supplier of any special provisions which affect the supplier in carrying out the transaction.

(h) *Letter of conditional reimbursement.* The General Sales Manager may choose to issue a letter of conditional reimbursement to an importing country or private trade entity with which an Agricultural Commodities Agreement is being considered. This letter authorizes the importing country or private trade entity to apply for a purchase authorization under which it may obtain reimbursement for certain costs it incurs in the procurement of the commodity and ocean freight before the Agricultural Commodities Agreement is signed. The reimbursement is conditioned on the signing of an Agricultural Commodities Agreement with the participant, providing for the financing of the commodity and ocean freight, and on the participant's complying with the terms and conditions set forth in the agreement, the letter of conditional reimbursement, and the purchase authorization.

§ 17.5 Approval of purchasing and shipping agents.

(a) *General.* A participant is not required to use a purchasing agent or shipping agent; however, if a purchasing or shipping agent is to be used, the participant shall submit the nomination(s) of the purchasing agent or shipping agent to the GSM in writing along with a copy of the proposed agency agreement. The participant shall also specify in the nomination the period of time for which such approval is requested. A person may not act as purchasing or shipping agent, or as both, if disapproved in writing by the Assistant General Sales Manager in accordance with the provisions of this section.

(b) *"Affiliate" defined.* For purposes of this section, the term "affiliate" has the meaning provided in § 17.2(c) and, in addition, persons will also be considered to be affiliates if any of the following conditions are met:

(1) There are any common officers or directors.

(2) There is any investment by ships brokers, ocean transportation suppliers, approved commodity suppliers, or selling agents, or their officers or directors, in the purchasing agent or shipping agent.

(3) There is any investment by the purchasing agent or shipping agent, or its officers or directors, in ships brokers, ocean transportation suppliers, approved commodity suppliers, or selling agents.

These conditions include those cases in which investment has been concealed by the utilization of any scheme or device to circumvent the purposes of this section but does not include investment in any mutual fund.

(c) *Information to be furnished.* A person whose nomination has been submitted to act as a purchasing agent or shipping agent, or both, shall furnish to the Assistant General Sales Manager the following information or documentation as may be applicable:

(1) The names of all incorporators;

(2) The names and titles of all officers and directors;

(3) The names and proportionate share interest of all stockholders;

(4) If beneficial interest in stock is held by persons other than the named shareholders, the names of the holders of the beneficial interest and the proportionate share of each;

(5) The amount of the subscribed capital;

(6) A written undertaking signed by such person agreeing that, if approved, neither the person nor any affiliates, as defined in this section, will act as ships broker, ocean transportation supplier, commodity supplier, or selling agent in any Title I transaction with the participant during the term of the agency agreement;

(7) A certification that the person has not arranged to give or receive any payment or other benefit in connection with the person's selection as agent.

(d) *Approval.* Consideration will be given to approval of a person to act as a shipping or purchasing agent, or both, when the documents required to be submitted by this section are received by the Assistant General Sales Manager. Approval of a nomination for purchasing agent or shipping agent may be withheld for a period not to exceed 30 calendar days pending completion of any investigation considered appropriate.

(e) *Duration of approval.* The approval of a purchasing agent or shipping agent to act for a participant shall remain in effect for the period of time requested by the participant or such shorter period as the Assistant General Sales Manager may determine. Generally, the Assistant General Sales Manager will not issue approvals extending beyond the supply period of the current Title I agreement. Such approval will be automatically terminated if the shipping or purchasing agent or any of the affiliates of such agent, acts as ships broker, ocean transportation supplier, commodity supplier or selling agent in connection with any Title I transaction for such participant during the term of the agency agreement.

(f) *Notification.* The Assistant General Sales Manager shall promptly notify persons seeking approval as purchasing or shipping agents of the determination or of the need for further investigation. If such person is disapproved, the notification shall state the reasons therefor. The determination of the Assistant General Sales Manager is effective immediately and continues in effect pending the result of any appeal to the General Sales Manager.

(g) *Disapproval or termination of approval.* Any person whose nomination has been disapproved or whose approval has been terminated pursuant to the provisions of this section may, within 30 calendar days, present to the General Sales Manager, orally or in writing, any reasons as to why such action should not stand. Nothing herein shall be construed as to prohibit a shipping agent or purchasing agent, whose application has been disapproved or whose approval has been terminated, from being nominated at a later time.

(h) *Unapproved purchasing agent.* If, in the procurement of commodities made available under Title I, Pub. L. 480, a participant uses a purchasing agent which has not been approved in writing by the Assistant General Sales Manager, USDA may withhold sales approval.

(i) *Unapproved shipping agent.* If, in the shipping of commodities made available under Title I, Pub. L. 480, a participant uses a shipping agent which has not been approved in writing by the Assistant General Sales Manager, USDA may withhold vessel approval or may deduct from the ocean freight differential to be paid, the amount of the shipping agent's commission in connection with the shipment.

(Approved by the Office of Management and Budget under control number 0551–0005)

§ 17.6 Contracts between commodity suppliers and importers.

(a) *Contracts—eligibility for financing.* To be eligible for financing, commodity contracts must comply with the following requirements unless otherwise specified in the purchase authorization.

(1) Commodity contracts between suppliers and importers are considered

to be conditioned on the approval by USDA of the supplier; the selling agent, if any; the contract price; conformance of the sale to the provisions of the purchase authorization; and, whenever purchases are made on the basis of an IFB, responsiveness of the offer to IFB terms.

(2) Importers and suppliers must enter into contracts within the contracting period specified in the purchase authorization. The contracts must provide for deliveries to the importer in accordance with the delivery terms and during the delivery period specified in the purchase authorization, or any amendment or modification thereto. (See § 17.4(f).)

(3) Contracts for a commodity, under a purchase authorization which limits contracting to f.o.b. or f.a.s. terms, must be separate and apart from the contracts for ocean transportation of the commodity.

(4) The contracted price may not be on a cost plus a percentage-of-cost basis.

(b) *Contracting procedures*—(1) *Purchasing—general.* (i) Importers may purchase through negotiation with commodity suppliers of the importer's choice unless the regulations or the purchase authorization requires that purchases be made on the basis of Invitations for Bids (IFB's).

(ii) The participant shall maintain a record of all offers received from suppliers, either as a result of IFB's or negotiation, until the expiration of three years after final payment under contracts awarded under the purchase authorization. The GSM may examine these records or request specific information in connection with the offers.

(2) *Purchasing—food commodities.* The importer shall purchase food commodities on the basis of IFB's.

(3) *Invitations for bids.* The following conditions shall apply on all purchases of commodities on the basis of IFB's:

(i) The General Sales Manager must approve the terms of the IFB before it is issued by the importer.

(ii) The importer shall issue the IFB in the United States and shall open all offers in public in the United States at the time and place specified in the IFB.

(iii) The IFB must permit submission of offers from all suppliers who meet the requirements of the regulations.

(iv) The IFB may not preclude offers for shipment from any United States port(s) unless the purchase authorization provides for exportation only from certain ports.

(v) The IFB may not establish minimum quantities to be offered or which will be considered.

(vi) The IFB must be in compliance with the regulations, the purchase authorization, and sound commercial standards.

(4) *Contract awards.* (i) Whenever purchases are made on the basis of an IFB, the importer shall consider only offers which are responsive to the IFB and shall make awards either on the basis of the lowest commodity price(s) offered or on the basis of lowest landed cost, except as provided in paragraph (b)(4)(ii) of this section:

(ii) For purposes of this section, 'lowest commodity price(s)' means the lowest commodity price(s) offered for loading onto the type of vessel (dry bulk carrier, tanker, tween-deck, etc.) to be utilized to carry the commodity purchased. When vessels offered under the flag of the participant or importing country or vessels controlled by the participant or importing country are to be used, the participant must purchase commodities for shipment on such vessels only on the basis of the lowest commodity price(s) offered. This limitation may, however, be waived by the GSM:

(A) When the lowest commodity price(s) offered are in locations where vessels cannot reasonably be made available without a substantial increase in freight costs to the participant;

(B) For small quantities offered at additional loading points (in aggregate not more than 15 percent of the total tonnage offered by a vessel); or

(C) Where this limitation would conflict with the purposes of the program.

(iii) For purposes of this section, 'lowest landed cost' means the combination of commodity price and ocean freight rate resulting in the lowest total cost to deliver the commodity to the importing country. Lowest landed cost may be defined on either a foreign flag or U.S. flag basis. Awards may not be made on the lowest landed cost basis unless IFB's are issued for commodity and ocean freight so that all commodity and ocean freight offers are reviewed simultaneously.

(iv) Participants are encouraged to purchase commodities on the basis of lowest landed cost when U.S. flag vessels are to be used. If such commodity purchases are not made on the basis of lowest landed cost (U.S. flag), ocean freight differential payments will nonetheless be calculated on the rates of U.S. flag vessels which would represent the lowest landed cost. Participants are therefore cautioned to review the provisions in the purchase authorization relating to the method of computing ocean freight differential.

(v) Announcement of awards shall be made in the United States. The importer shall promptly submit to the P.L. 480 Operations Division, FAS, USDA, copies of all offers received with a copy of the IFB which was issued. No sale can be approved for financing until this information has been received by FAS. The decision of the GSM shall be final regarding the responsiveness of offers to IFB terms in the awarding of contracts.

(c) *Contract quantity eligible for financing.* The quantity eligible for financing in the contract between the supplier and the importer may not exceed that quantity approved by the P.L. 480 Operations Division, FAS, including any approved contract tolerance.

(d) *Contract disputes.* Contracts between suppliers and importers should stipulate the responsibility of each party for payment of any costs not eligible for financing by CCC. Ouestions as to payment of ineligible costs should be resolved between the contracting parties.

(e) *Special contracting provisions.* The general provisions for contracting set forth in this section are supplemented by special contracting provisions in Appendix A applicable to individual commodities. Each purchase authorization, unless otherwise provided, is subject to the special provisions of Appendix A for the specific commodity named in the purchase authorization as though such special provisions were fully set forth in the purchase authorization. Each contract entered into for financing under these regulations is deemed to include all terms and conditions required by the regulations in this subpart.

(f) *Export Trade Act (Webb-Pomerene Law).* A supplier who is a member of a Webb-Pomerene association and who enters into contracts with importers as a member of such an association shall so indicate in a statement on, or attached to, the copy of the supplier's detailed invoice referred to in § 17.18(c)(2).

(g) *Shipment before letter of credit.* If the supplier of the commodity permits shipment, or the supplier of ocean transportation accepts the commodity, before receipt of an acceptable letter of credit from a bank, the supplier takes such action at its own risk. This action in itself does not affect eligibility for CCC financing provided acceptable documentation is presented within the time limitations prescribed in the regulations in this subpart.

§ 17.7 Eligibility of suppliers and selling agents.

(a) *Suppliers of ocean transportation (requirements).* The supplier must be engaged in the business of furnishing ocean transportation from the United States and must have a person, principal or agent, on whom service of judicial process may be had in the United States.

(b) *Commodity suppliers (requirements).* (1) The commodity supplier must be engaged in the business of selling agricultural commodities for export from the United States.

(2) The commodity supplier must maintain a bona fide business office in the United States, and shall have a person, principal or agent, on whom service of judicial process may be had in the United States.

(3) A legal entity which is more than 50 percent owned by a foreign government, or which is controlled by a foreign government, may not act as a commodity supplier.

(c) *Commodity suppliers (approval).* (1) Commodity suppliers must be approved by USDA as eligible under the Pub. L. 480, Title I program in order for their contracts to be eligible for CCC financing.

(2) Persons who wish to participate as commodity suppliers may be required to submit the following information to USDA, which will determine their eligibility:

(i) A current financial statement of the person as evidence of financial responsibility.

(ii) A statement containing general background information about the person, with particular reference to experience as an exporter of U.S. agricultural commodities, and any other information requested relating to whether the person is a responsible person and able to perform its obligations under this subpart and the purchase authorization.

(3) A commodity supplier's sales will not be approved unless the supplier has submitted a statement listing name, address and chief executive officers of all legal entities, foreign and domestic, which the supplier owns or controls and similar information for all legal entities which own or control the supplier and for all legal entities which are owned or controlled by any legal entity which owns or controls the supplier.

(i) The term "chief executive officers" includes:

(A) The president, or if no president, the chairman of the board of directors, and

(B) The vice president, but in cases of multiple vice presidents only the principal vice president, and then only if one is so designated, and

(C) Any other person who is designated as, or who acts in the capacity of, a chief executive officer.

(ii) If a person has been approved as an eligible supplier, the statement required in (b)(3) of this section must be kept current; that is, all changes must be reported within three months after they have occurred. If an approved supplier does not keep this statement current, USDA may disapprove the supplier's sales.

(iii) A statement filed by a subsidiary is considered complete as to the legal entities which it owns or controls and any other legal entities owned or controlled by the parent (including the chief executive officers for all such companies) if the subsidiary certifies thereon that such information has been furnished to USDA in a separate statement filed by the parent.

(4) The supplier shall submit the information required in this section to the appropriate office listed below:

(i) For all commodities except tobacco and cotton, to the Director, P.L. 480 Operations Division, FAS, USDA, Washington, D.C. 20250.

(ii) For tobacco, to the Director, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013.

(iii) For cotton, to the Director, Kansas City ASCS Commodity Office, USDA, P.O. Box 8510, Kansas City, Missouri 64114.

(5) The General Sales Manager, FAS, is responsible for approval of suppliers of all commodities except tobacco and cotton. The Administrator, ASCS, is responsible for approval of suppliers of tobacco and cotton.

(6) USDA may permit a person to act as a commodity supplier only on submission of acceptable performance security in the form of a letter of credit which will assure that the person and the person's selling agents will perform the obligations required under this subpart and the purchase authorization.

(c) *Selling agents (requirements).* If, at the time the commodity supplier reports the sale for price approval, it is determined that an agent employed or engaged by a commodity supplier to obtain a contract is not a selling agent as defined in § 17.2(c), the sale will not be eligible for financing. (See § 17.8(c) regarding commissions to selling agents for food commodities.)

(d) *Disapproval; approval under certain conditions.* USDA shall notify promptly a prospective supplier or a selling agent who is not approved, or who is approved under certain conditions established under these regulations. The notification will state the reasons for the action taken or conditions established. The prospective supplier or selling agent may appeal the action to a designated USDA official and submit further information, orally or in writing, bearing on the determination.

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§ 17.8 Fees, discounts, commissions, brand names.

(a) *Consular fees.* CCC will not finance consular fees imposed for the issuance or legalization of consular invoices or certificates in connection with the importation of commodities into a foreign country.

(b) *Discounts.* If a contract provides for one or more discounts (including but not limited to trade or quantity discounts and discounts for prompt payment) whether expressed as such or as "commissions" to the importer, only the invoice amount after discount (supplier's contracted price less all discounts) is eligible for financing.

(c) *Commissions.* (1) (i) For non-food commodities, a commission to a selling agent as defined in § 17.2(c), employed or engaged by the supplier to obtain a contract, is eligible for financing to the extent that such commission is included in the contract price, except as stated in this paragraph.

(ii) For food commodities, a commission, fee or other payment to a selling agent as defined in § 17.2(c), employed or engaged by the supplier to obtain a contract, is prohibited.

(A) Any act by a person on behalf of a commodity supplier, which would influence or tend to influence a buyer to award a contract to the supplier, or which may result in the supplier's having a competitive advantage in relation to other potential suppliers, constitutes an act "to obtain a contract." Furthermore, any act by a person on behalf of a commodity supplier to influence USDA to approve a contract for financing constitutes an act "to obtain a contract."

(B) Services on behalf of a supplier which are purely ministerial in nature and do not require the exercise of personal influence, judgment, or discretion, such as attending bid openings or presenting offers at bid openings, would not in themselves be considered acts "to obtain a contract."

(C) Services to implement a contract after it has been entered into by the parties thereto, such as handling documentation problems or contract disputes, would not constitute acts "to obtain a contract."

(D) Payments of any kind to a person who has acted as a selling agent to obtain a contract, including payments for services that may be performed in connection with such contract which in themselves are not services to obtain a contract, are prohibited.

(2) A commission paid or to be paid to any agency, including a corporation, owned or controlled by the participant or the government of the destination country is not eligible for financing.

(3) A commission paid or to be paid to any agent, broker or other representative of the participant or the importer is not eligible for financing. This limitation applies to ocean transportation brokerage commissions which exceed 2½ percent of the freight financed.

(4) For ocean transportation, in addition to this paragraph, see also § 17.14(i)(8).

(5) If a commission is paid in violation of paragraph (c) (2) or (3) of this section, CCC may demand dollar refund of the entire amount financed by CCC under the contract.

(6) The supplier should be aware of § 17.12 regarding reports required on certain commissions paid.

(d) *Brand names.* Brand names are not required to be shown on packaged commodities. If, however, a brand name is used, it must be a bona fide U.S. brand. The container or attached label must show the name and U.S. business address of the supplier or the manufacturer. Any reference on the container or attached label to foreign addresses of suppliers or foreign brand names is prohibited and will make the sale ineligible for financing. If the markings on the shipping container include a brand name, such brand name must be identical with the brand name on the unit container.

§ 17.9 Notice of sale rocedures (tobacco and cotton).

The notice of sale procedures for tobacco and cotton are contained in Appendix A of the regulations and the purchase authorization.

§ 17.10 Notice of sale procedures (commodities other than tobacco and cotton).

(a) *Submission of notice of sale.* The supplier shall, immediately upon making a firm sale, telephone a notice of sale to P.L. 480 Operations Division, FAS, (202) 447–5780.

(1) A sale is considered firm under the regulations when the supplier has been notified by the importer of an award, even though the contract is conditioned on approval by FAS of the price; the supplier; the selling agent, if any; conformance of the sale to the provisions of the purchase authorization; and responsiveness of the offer to the IFB terms.

(2) The supplier shall not withhold the notice of sale because of the existence of contract provisions which make a contract conditional on the occurrence of certain events, i.e., on approval of the price by FAS, on the receipt of acceptable letter(s) of credit, or receipt of delivery instructions.

(3) Each notice of sale shall cover only a single sale contract. If a sale is made under two or more purchase authorizations, separate notices of sale shall be submitted for each purchase authorization.

(4) If the supplier fails to furnish a notice of sale within 5 calendar days after the date of sale, CCC has the right to refuse to finance the sale.

(5) The following information must be included in the notice of sale. (Contracts containing options for the items listed in this paragraph (a)(5) are acceptable only as provided in paragraph (a)(5)(vii) or the purchase authorization.)

(i) Purchase authorization number.

(ii) Name and address of supplier.

(iii) Date and time of sale. (See § 17.11(b)(2).)

(iv) Country to which export is to be made (destination).

(v) Name of importer.

(vi) Contract quantity expressed in the contract unit and in the quantity unit in which the commodity normally trades.

(vii) Contract tolerance, if any, expressed in percentage, but not in excess of 5 percent more or less. This tolerance must be at buyer's option and must include any loading tolerance. If the contract does not provide a tolerance, show "No tolerance."

(viii) Price per contract unit and per quantity unit in which the commodity normally trades.

(ix) Coast or port of export (e.g., East coast, West coast, Gulf coast, Great Lakes port) or Canadian transshipment point in the case of bulk grain.

(x) Delivery period specified in the contract.

(xi) Delivery terms (f.o.b., f.a.s., etc.).

(xii) Complete commodity description.

(xiii) Complete packaging description and packaging material specifications if export is other than in bulk.

(xiv) Supplier's contract number, sale number, or order number, if any.

(xv) Name and address of selling agent (supplier's agent) if any. If none, show "None."

(xvi) Import license number when required by the purchase authorization.

(xvii) Any other terms of the contract between the supplier and importer not specifically provided for in this paragraph (a)(5) which would affect the delivery of the commodity to be exported.

(xviii) Any additional information requested by the purchase authorization.

(b) *Sale approval.*

(1) P.L. 480 Operations Division, FAS, will notify the supplier by telephone as to whether it has been determined on the basis of the information submitted in the notice of sale:

(i) That the price is approved for financing;

(ii) That the supplier and the selling agent, if any, are approved under the program;

(iii) That the sale conforms to the provisions of the purchase authorization; and

(iv) That the offer is responsive to the terms of the IFB.

(2) The supplier shall prepare Form FAS–359 (or CCC–359), "Declaration of Sale," and shall mail or otherwise deliver it to P.L. 480 Operations Division, FAS, promptly as soon as FAS has provided the CCC Registration Number to the supplier.

(3) The supplier shall enter on the Declaration of Sale form the same information as provided in paragraph (a)(5) above. Each Declaration of Sale form covers only a single sale contract. The supplier shall submit the Declaration of Sale form in an original and 4 copies, and it must be signed by the supplier or the supplier's authorized representative.

(4) USDA will return two copies of the Declaration of Sale form to the supplier, signed for the General Sales Manager by an authorized official, confirming the telephonic approval given as provided in paragraph (b)(1) above.

(5) Declaration of Sale forms are available from P.L. 480 Operations Division, FAS, USDA, Washington, D.C. 20250. Telephone (202) 447–5780.

(c) *Sale disapproval.* (1) P.L. 480 Operations Division, FAS, will notify the supplier by telephone and telegraph when a sale is disapproved for financing. The related contract between the supplier and importer shall, for purposes of financing, be considered null and void.

(2) On receipt of a notice of disapproval, the supplier shall promptly notify the importer.

(d) *Contract delivery period.* Price approval is limited to exports made during the delivery period stated in the notice of sale or any amendment thereto submitted to P.L. 480 Operations Division, FAS, even though the purchase authorization may authorize a final delivery date later than that stated in the sale. If the supplier cannot complete

delivery on or before the terminal delivery date of the contract delivery period, the supplier shall submit a notice of contract amendment as provided in paragraph (e) of this section. If the supplier fails to comply, § 17.17(d) of the regulations shall apply.

(e) *Contract amendments.* (1) The supplier shall submit a notice of each contract amendment to the Director, P.L. 480 Operations Division, FAS/EC, by telephone or telegraph immediately after the amendment to the contract is made. This includes not only any change in the contract delivery period or any other terms and conditions of the contract as provided in the information given in the original notice of sale or any amendment thereto, but also any change in any other terms and conditions of the contract.

(2) If a notice of an amendment is made by telephone, the supplier shall confirm immediately in writing (by telegraph).

(3) The supplier shall include only amended items pertaining to a single sale in one amendment notice.

(4) The notice of contract amendment must contain the following:

(i) A request that USDA approve an amendment to the specifically identified sale contract between the Government of (country) and (commodity supplier).

(ii) A statement of what the amendment consists of (as, extension of delivery period through (date)) and a detailed explanation of the reasons for the amendment.

(iii) A statement that the contract amendment has been agreed to by both buyer and seller.

(5) Any amendment to a contract for which FAS has given price approval subjects the terms of the contract, as amended, to reexamination by FAS for the purpose of financing under Pub. L. 480.

(6) P.L. 480 Operations Division, FAS, will notify the supplier by telegraph and telephone as to whether the amendment is approved or disapproved.

(7) Any amendment must be consistent with the provisions of the purchase authorization and the regulations and must otherwise be acceptable to P.L. 480 Operations Division, FAS.

(8) The supplier shall furnish a copy of the USDA telegraphic approval of the amendment with other documentation submitted to obtain payment.

(9) If the supplier fails to furnish notice of a contract amendment to P.L. 480 Operations Division, FAS, within 5 calendar days after the date of such amendment, CCC has the right to refuse to finance the sale or to finance such portion of the contract price or contract quantity as it may determine to be in the interest of the U.S. Government.

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§ 17.11 Commodity price provisions.

(a) USDA price approval. In order for a sale to be eligible for CCC financing, the commodity price must be approved by USDA. (See §§ 17.9 and 17.10).

(b) Maximum price. (1) The supplier's sales price may not exceed the prevailing range of export market prices as applied to the terms of sale at the time of sale, as determined by USDA.

(2) The "time of sale," unless otherwise defined for specific commodities in Appendix A of this subpart or the purchase authorization, means

(i) For commodities purchased under an Invitation for Bids, the date and time specified in the IFB for submission of offers; or

(ii) For all other commodities, the date as of which the sales price is established in or under the contract between the importer and the suppler.

(iii) For contract amendments for all commodities, the "time of sale" means the date of any amendment if the amendment in any manner affects the sale price as determined by USDA.

(3) If USDA is unable to ascertain the prevailing range of export market prices for a specific commodity, USDA will determine a maximum export market price, representing the top of the range of export market prices, for the commodity at the time of sale for the time and place of delivery provided for in the contract. In so determining a maximum export market price USDA will use, as needed, available domestic or export market information for the same or other quality descriptions, packagings, locations, and dates; will apply appropriate market differentials and other factors as would be reflected in the export market price at the time of sale for the time and place of delivery; and will take into account CCC export sale prices when appropriate.

(4) When the purchase authorization provides for a maximum price, expressed in dollars and cents or computed on a stated basis, the supplier's sales price may not exceed this maximum price.

(c) Refund of excess price. If the sale has been financed and the sales price is determined to exceed the maximum price permissible under this section, the supplier shall refund the amount of the excess in accordance with § 17.17(d).

§ 17.12 Reports required from suppliers of commodities and ocean transportation.

(a) *General.* Suppliers of—

(1) Agricultural commodities financed under the Act and

(2) Vessels on which such commodities are transported, if ocean freight or ocean freight differential is financed by CCC with respect thereto,

shall report to the General Sales Manager any commission, fee or other compensation of any kind (hereinafter referred to as "payment") which, in connection with the supplying of such commodities or vessels, is paid or to be paid by the supplier to any agent, broker, or other representative of the importer or importing country, including a corporation owned or controlled by the importer or importing country, to which the supplier furnishes such commodities or vessels.

(b) *Compensation.* The term "other compensation of any kind" in paragraph (a) of this section means anything given in return for any consideration, services, or benefits received or to be received by the supplier in connection with the supplying of commodities or vessels financed under the Act.

(c) *Reporting.* The supplier shall report in writing as soon as the supplier knows that a payment as described in paragraph (a) of this section is made or to be made. Reports must be submitted to the General Sales Manager, Room 4073–S, Foreign Agricultural Service, Export Credits, U.S. Department of Agriculture, Washington, D.C. 20250.

(d) *Information to report.* The supplier shall include in the report the following information with respect to each payment reported under paragraph (a) of this section:

(1) The name and address of the person to whom the payment was made or is to be made, and the person's relationship to the importer or importing country.

(2) The date payment was made or the approximate date when payment is to be made, and the amount or the approximate amount of payment.

(3) An explanation of the transaction in connection with which the payment was made or is to be made.

(4) The number(s) of the purchase authorization(s) providing for the financing under the Act of the sale of agricultural commodities to the importer or importing country to whose agent, broker or other representative the payment was made or is to be made.

(e) *Knowledge imputed.* Knowledge of any fact material to obligations under this section shall be imputed to the supplier if the supplier should reasonably have known that such fact existed.

(f) *Information available for public inspection.* The information in reports

filed hereunder will be available for public inspection by contacting the General Sales Manager, FAS, USDA, at the address given in paragraph (c) of this section.

(g) *Failure to file a report or filing a false report.* Failure to file a required report or the filing of a false report hereunder constitutes a cause for debarment pursuant to 7 CFR 1407.5(c). Whenever the GSM believes, or has reason to believe, that a supplier has failed to file a report as required by this section or has filed a false report thereunder, the GSM is authorized to institute suspension or debarment proceedings against the supplier in accordance with the provisions of 7 CFR Part 1407.

(h) *Debarment.* If a final determination has been made under 7 CFR Part 1407 that a supplier has failed to file a report as required by this section or has filed a false report thereunder, the supplier shall be debarred, for a period of five years from the date of such final determination, from furnishing—directly or indirectly—commodities financed under the Act or vessels on which such commodities are to be transported if ocean freight or ocean freight differential is to be financed by CCC with respect thereto. Such supplier may also be debarred (in accordance with 7 CFR Part 1407) from participating in other programs administered or financed by CCC.

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§ 17.13 Refund to CCC by the participant for failure to comply.

The participant shall pay in U.S. dollars promptly to CCC on demand by the General Sales Manager the entire amount financed by CCC (or such lesser amount as the GSM may demand) whenever the GSM determines that the participant has failed to comply with any agreement or commitment made by the participant in connection with the transaction financed.

5. The terms "Office of the General Sales Manager" and "OGSM" are changed to read "Foreign Agricultural Service" and "FAS" respectively, wherever they appear in Part 17 and its Appendices A and B.

6. The terms "Ocean Transportation Division" and "Program Operations Division" are changed to read "P.L. 480 Operations Division" wherever they appear in Part 17 and its Appendices A and B.

7. In newly redesignated § 17.14, the first sentence of paragraph (a)(1) is revised to read as follows: "This section applies to the financing of ocean freight or ocean freight differential."

8. The address of the Director, ASCS Commodity Office, U.S. Department of Agriculture, is changed from "Wirth Building, 120 Marais Street, New Orleans, La. 70112" to "P.O. Box 8510, Kansas City, Missouri 64114" in newly redesignated § 17.14, paragraph (b)(1); and in Appendix A, Sections (W)(1) and (10), and Sections (V)(1) and (10).

9. In Appendix A, Section (V)(6), "New Orleans, La. 70112" is revised to read "P.O. Box 8510, Kansas City, Missouri 64114."

10. In Appendix A, Section (V)(10), and (W)(10), the reference "Attention: CO–8–JPD" is removed.

11. The term "New Orleans ASCS Commodity Office" is changed to read "Kansas City ASCS Commodity Office" in newly redesignated § 17.14, paragraphs (c)(1), (h)(i), (j)(3)(ii), (j)(4), and (j)(6); and in Appendix A, Sections (V)(3)(c), (V)(5) and (V)(9)(b), and Sections (W)(3)(c), (W)(5) and (W)(9)(b).

12. In newly redesignated § 17.14, paragraph (d)(4) is amended by changing "§ 17.9(l)" to "§ 17.14(l)."

13. In newly redesignated § 17.14, the fourth sentence of paragraph (j)(1) is removed.

14. In newly redesignated § 17.14, paragraph (k)(6) is amended by changing "§ 17.13(d)(2)" to "§ 17.18(d)(2)."

15. In newly redesignated § 17.14, paragraph (k)(8) is revised to read as follows:

§ 17.14 Ocean transportation.

* * * * *

(k) * * *

(8) When the General Sales Manager determines that a force majeure has occurred, as specified in paragraph (k)(7) of this section, not to exceed 90 percent of the ocean freight or ocean freight differential, as appropriate, shall be eligible for reimbursement by CCC. Any despatch shall be divided in proportion to the ocean freight or ocean freight differential, as appropriate, financed respectively by the participant and CCC, and CCC's portion thereof shall be deducted in determining amounts to be reimbursed by CCC. The 10 percent balance of ocean freight or ocean freight differential shall not be eligible for financing.

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16. In newly redesignated § 17.14, paragraph (k)(9) is amended by changing "(k)(8)(i)" to read "(k)(8)."

17. In newly redesignated § 17.15, paragraph (h)(4) is amended by changing "§ 17.13" to "§ 17.18."

18. In newly redesignated § 17.15, paragraph (j) is amended by changing "§ 17.7" to "§ 17.11" and "§ 17.15(b)(7)" to "§ 17.20(b)(7)."

19. In newly redesignated § 17.16, paragraph (a) is amended by changing the heading to read "(a) General." and changing "§ 17.13(c)" to read "§ 17.18 (c) and (d)."

20. In newly redesignated § 17.16, paragraph (b) is removed and reserved.

21. In newly redesignated § 17.17, paragraph (d) is amended by changing "§ 17.7" to "§ 17.11."

22. In newly redesignated § 17.18, paragraph (b)(1)(ii) is revised to read as follows:

§ 17.18 Documentation.

* * * * *

(b) * * *

(1) * * *

(ii) Documents submitted to CCC to obtain reimbursement under a purchase authorization which provides financing for ocean freight, or ocean freight differential.

* * * * *

23. In newly redesignated § 17.18, paragraph (d)(6) is amended by changing "§ 17.9(m)" to "§ 17.14(m)."

24. In newly designated § 17.18, paragraph (d)(7) is amended by changing "§ 17.9(j)(1)" to "§ 17.14(j)(1)."

25. In newly redesignated § 17.19, paragraph (a) is amended by changing "§ 17.13" to "§ 17.18."

26. In newly redesignated § 17.19, paragraph (b)(2) is amended by changing "§ 17.15(a)(7)" to "§ 17.20(a)(7)."

27. The introductory text of newly redesignated § 17.20 is amended by changing "§§ 17.10 and 17.14" to "§§ 17.15 and 17.19."

28. In newly redesignated § 17.20, paragraph (a)(1) is amended by changing "§ 17.13" to "17.18."

29. In newly redesignated § 17.20, paragraph (a)(6) is amended by changing "§ 17.10(h)(3)" to "§ 17.15(h)(3)."

30. In newly redesignated § 17.20, paragraph (a)(9)(ii) is amended by changing "§ 17.12" to "§ 17.17."

31. In newly redesignated § 17.20, paragraph (b)(4) is amended by changing "§ 17.13(c)(4)" to "§ 17.18(c)(4)."

32. In newly redesignated § 17.20, paragraph (b)(7) is amended by changing "§ 17.7" to "§ 17.11."

33. In newly redesignated § 17.20, paragraph (b)(8) is amended by changing "§ 17.9" to "§ 17.14."

34. In newly redesignated § 17.20, paragraph (c)(1) is amended by changing "§§ 17.15(a) and 17.15(b)" to "§§ 17.20(a) and 17.20(b)."

35. In newly redesignated § 17.20, paragraph (c)(4) is amended by changing "§ 17.10(j)" to "§ 17.15(j)."

36. In newly redesignated § 17.20, paragraph (c)(6) is amended by changing "§§ 17.3 and 17.5" to "§§ 17.3 and 17.4."

37. Newly redesignated § 17.21 is revised to read as follows:

§ 17.21 ASCS Offices.

Kansas City ASCS Commodity Office, U.S. Department of Agriculture, P.O. Box 8510, Kansas City, Missouri 64114

Fiscal Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20001

38. Newly redesignated § 17.22 is amended by revising the OMB control number statement at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 0551–0005)

39. Newly redesignated § 17.23 is revised to read as follows:

§ 17.23 Effective date.

The regulations in this subpart become effective as to financing of the sale and exportation of commodities pursuant to purchase authorizations issued on or after January 30, 1987. The financing of the sale and exportation of commodities pursuant to purchase authorizations issued before January 30, 1987 continues to be subject to the provisions of the regulations which were applicable before January 30, 1987 unless made subject to the regulations in this subpart by the applicable purchase authorization.

40. In Appendix A the following paragraphs are removed and reserved: (A) (1), (2) and (3); (B) (1), (4) and (5); (C) (1) and (2); (D) (1) and (2); (E) (1) and (2); (F) (1) and (2); (H) (1), (2) and (3); (I) (1) and (2); (J) (1) and (2); (K) (1) and (2); (L) (1) and (2); (M) (1) and (2); (N) (1) and (2); (O) (1) and (2); (P) (1) and (2); (Q) (1) and (2); (R) (1) and (2); (S) (1) and (2); (T) (1) and (2); and (U) (1) and (2).

41. In Appendix A, paragraphs (B)(2) and (B)(7) are amended by changing "Form CCC–362" to "Form CCC–359 or Form FAS–359."

42. The references to "Form NOCO–467" are changed to "Form KC–467" in Appendix A, Sections (V)(2)(a) and (W)(2)(a); and in Appendix B, Sections (V)(7) and (W)(7).

43. In Appendix A, the references to "§ 17.7" and "§ 17.7(a)" are changed to "§ 17.11(b)" in Sections (V)(2) introductory text, (V)(2)(a) and (b), (W)(2) introductory text, and (W)(2)(a) and (b).

44. In Appendix A, the references to "§ 17.12(a)" are changed to "§ 17.17(a)" in Sections (V)(3)(d) and (W)(3)(d).

45. In Appendix A, the references to "§ 17.12(b)" are changed to "§ 17.17(b)" in Sections (V)(3)(e) and (W)(3)(e).

46. In Appendix A, Sections (V)(3)(a) and (b) and (W)(3)(a) and (b) are revised to read as follows:

(a) *Contracts basis Form A Sample Classification Memorandum (USDA Form CN–354) or Form R Classification Memorandum (USDA Form CN–358.) (Such Forms are hereinafter referred to respectively as Form A, or Form R Certificates.)* If USDA Form A or Form R Certificates are required for all contract quality factors, i.e., grade, staple, micronaire, and strength (if strength is required in the contract), CCC will finance 100% of the f.a.s. invoice value.

(b) *Contracts basis foreign arbitration.* For contracts other than those which require USDA Form A or Form R for all contract quality factors, CCC will finance 98% of the f.a.s. invoice value.

47. In Appendix A, Section (W)(6), the reference to "New Orleans, La." is changed to "Kansas City, Mo."

48. In Appendix B, paragraphs (A)(1)(g) and (A)(2)(g), (B)(7), (C)(1)(g) and (C)(2)(g), (D)(7), (E)(7), (F)(1)(g) and (F)(2)(g), (H)(1)(g) and (H)(2)(g), (I)(7), (J)(7), (K)(1)(g) and (K)(2)(g), (L)(7), (M)(7), (N)(7), (O)(7), (P)(7), (Q)(7), (R)(7), (S)(7), (T)(7) and (U)(7), are revised to read as follows:

One copy of Form CCC–359 or Form FAS–359, 'Declaration of Sale,' signed for the General Sales Manager, by which the supplier was notified that the sale was approved for financing.

Signed at Washington, D.C. on Dec. 11, 1986.

William L. Davis,

Acting General Sales Manager, Foreign Agricultural Service.

[FR Doc 88–29380 Filed 12–30–86; 2:34 pm]

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Federal Register

Vol. 51, No. 250

Wednesday, December 31, 1986

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Code of Federal Regulations

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Laws 523-5230

Presidential Documents

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United States Government Manual 523-5230

Other Services

Library	523-5240
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TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

43167-43336.....1
43337-43578.....2
43579-43720.....3
43721-43860.....4
43861-44932.....5
44033-44260.....8
44261-44440.....9
44441-44582.....10
44583-44752.....11
44753-44896.....12
44897-44982.....15
44983-45100.....16
45101-45292.....17
45293-45440.....18
45441-45750.....19
45751-45870.....22
45871-46586.....23
46587-46848.....24
46849-46984.....29
46985-47184.....30
47185-47418.....31

CFR PARTS AFFECTED DURING DECEMBER

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

302.....46985
305.....46985

3 CFR

Proclamations:
5579.....43167
5580.....43861
5581.....43863
5582.....43865
5583.....43867
5584.....43869
5585.....44261
5586.....44441
5587.....44583
5588.....44585
5589.....44753
5590.....44755
5591.....45290
5592.....45290, 45871
5593.....46587
5594.....46589

Executive Orders:
12543 (See Notice of December 23, 1986).....46849
12544 (See Notice of December 23, 1986).....46849
12575.....43718
12576.....43721
12577.....46591

Administrative Orders:
Presidential Determinations:
No. 87-4 of December 11, 1986.....45293
Notices:
December 23, 1986.....46849

5 CFR

831.....45441
841.....47185, 47189
842.....47195
870.....43337
871.....43337
872.....43337
873.....43337
2422.....45751
2423.....45751, 45752
2424.....45753
2425.....45754
2429.....45751, 45754

Proposed Rules:
Ch. XIV.....45775
213.....43359
735.....43359
831.....45471, 47021
2423.....45775
2429.....45775

7 CFR

6.....45295
17.....47408
52.....46992
271.....47378
272.....47378
273.....47378
277.....47378
301.....44033, 44443
302.....44587
400.....44588
403.....45295
405.....45295
409.....45295
411.....45295
413.....45295
415.....45295
416.....45295
417.....45295
418.....45295
419.....45295
420.....45295
421.....45295
422.....45295
423.....45295
424.....45295
425.....45295
427.....45295
428.....45295
429.....45295
430.....45295
431.....45295
432.....45295
433.....45295
435.....45295
436.....45295, 47198
437.....45295
438.....45295
439.....45295
446.....45295
447.....45295
448.....45295
450.....45295
451.....45295
770.....43579
800.....43723
905.....44263, 44444
907.....43169, 43871, 44757, 45446, 46851, 47203
910.....43169, 43871, 44757, 45447, 46593
985.....45448
987.....44589
991.....44589
1011.....44264
1064.....44589, 45575
1102.....44590, 45575
1106.....44590, 45575, 46746
1108.....44590, 45575
1126.....44590, 45575
1403.....46993
1421.....46996

1427 46996
1446 ..... 44758, 45837, 46997
1477 46593
1736 45450
1784 46997
1864 45430
1900 45430
1903 45430
1944 ..... 44897, 45430
1945 43580
1951 45430
1955 45430
1956 45430
1962 45430
1965 45430
2200 44265

Proposed Rules:

68 44072
210 47245
220 47245
226 47245
235 44992
250 44992
252 44992
255 44992
271 43612
278 43612
301 ..... 44481, 45079, 45332
318 44746
319 ..... 44481, 45079
330 46864
454 45333
656 45775
810 43495
907 44992
985 45475
1000 45477
1006 44913
1007 44913
1011 44913
1012 44913
1013 44913
1030 44611
1032 44611
1033 44611
1036 ..... 44611, 45121
1046 44913
1049 44611
1050 44611
1065 ..... 44617, 44993, 45575
1079 ..... 44617, 45575
1093 44913
1094 44913
1096 44913
1098 44913
1099 44913
1102 44299
1106 44299
1140 45477
1784 43365

8 CFR

109 44782
212 44782
214 44266

Proposed Rules:

109 45338
207 44795

9 CFR

77 45451
78 ..... 43170, 45452, 47000
92 ..... 43172, 44034, 45873
94 ..... 43174, 45101
97 44035
161 45874
162 45874
308 45602
318 ..... 43872, 45602
320 45602
327 ..... 44899, 45602
381 45602

Proposed Rules:

75 46867
78 45776
91 46684
92 45778
145 43577
147 43577
160 46685
161 46685
307 ..... 44306, 45427
310 44920
312 45477
318 44994
350 ..... 44306, 45427
351 ..... 44306, 45427
354 ..... 44306, 45427
355 ..... 44306, 45427
362 ..... 44306, 45427
381 ..... 44306, 45427, 45477

10 CFR

25 47204
50 ..... 43709, 47206
95 47204
110 47207
810 44570

Proposed Rules:

2 ..... 43367, 45338
20 43367
30 ..... 45122, 46687
40 ..... 45122, 46687
50 ..... 43369, 43930, 47025, 47249
70 ..... 45122, 46687

12 CFR

5 44593
204 43175
226 ..... 45296, 47106
265 45877
309 47208
337 45755
347 47208
505a 45877
535 45879
563 47001
600 44408
601 44408
602 44408
603 44408
604 44408
611 44408
612 44408
613 44408
614 44408
615 ..... 44310, 44408
617 44408
618 44408
620 44783
621 44783
624 46597

Proposed Rules:

202 43371
205 43615
226 ..... 43372, 45342, 47106
611 44308
615 44310
701 46869
708 43377
741 46869
744 43383

13 CFR

101 44036
121 ..... 44036, 45102
123 ..... 45299, 47209
125 44037

14 CFR

39 ..... 43176–43179, 43337–43342, 43581–43583, 44038–44046, 44438, 44439, 44595, 44901, 44902, 45300–45306, 45756, 46602, 47209–47213
71 ..... 43180, 43342, 43584, 43709, 43875, 44048, 44597, 44976, 45307–45309, 45757, 45757, 45758, 46603–46609, 47215–47217
73 ..... 44597, 46608, 46609
75 ..... 46609, 46611–46613, 47217, 47218
91 47219
93 43584
97 ..... 43875, 47221
108 44874
159 43584
323 43180
385 44598
399 43180

Proposed Rules:

23 44878
27 45343
29 45343
39 ..... 43216, 43383, 44632, 44921, 44922, 45779, 46687, 47249–47251
49 44072
71 ..... 43384, 43385, 43930, 44633, 45344, 45345, 45780, 45911, 47253–47256
73 ..... 43616, 47257, 47259
91 ..... 44422, 44432
135 44422

15 CFR

21 47004
23 46613
370 ..... 43725, 46851
372 ..... 43725, 46851
373 ..... 45309, 46851
375 46851
376 44784
386 46851
399 ..... 43725, 45309

Proposed Rules:

399 43931
2301 43804

16 CFR

13 ..... 43587–43593, 46615
1700 45311

Proposed Rules:

13 ..... 43746, 43932
453 43746
456 43217
703 43748

17 CFR

1 ..... 44866, 45759
3 45759
200 44267
210 45576
211 ..... 43594, 44446, 45314
229 45576
231 43594
239 45576
240 ..... 44267, 45576
241 43594
249 45576
270 45576

Proposed Rules:

1 44871
229 47026
230 46874
249 47026
270 47260

18 CFR

11 44049
13 44049
37 43343
141 44281
157 43599
159 43599
250 44281
260 44281
270 46762
271 44053
282 47222
284 ..... 43599, 44281, 46762
375 44049
381 43599

Proposed Rules:

Ch. I 44634
1301 43934

19 CFR

24 43188
111 45761
171 45761
178 45761

Proposed Rules:

101 45345
171 ..... 44483, 45079
210 44484

20 CFR

360 43726
404 44983
416 ..... 43709, 44983
617 ..... 45840, 45867, 46746

21 CFR

74 ..... 43877, 46852
81 ..... 43877, 43899
82 43877
175 47009
176 ..... 43733, 47010
177 ..... 43190, 45315
178 ..... 45881, 47010, 47011, 47223
193 46616
201 43900
510 47012
520 44449
522 44449
546 44450
558 ..... 44055, 45104
561 46616
610 ..... 44451, 44903
630 44451
814 43343

Proposed Rules:

16 ..... 43217, 44863
310 47028
314 47028
558 45346
700 43935
812 44567
864 44924

22 CFR

121.....47013
123.....47013
124.....47013
125.....47013
126.....47013
127.....47013
128.....47013
514.....43904

Proposed Rules:

309.....44639

23 CFR

Proposed Rules:

1.....44996
140.....44996
645.....45479
655.....44997

24 CFR

13.....43607
15.....44284
146.....45264
203.....44286
232.....43905
235.....43905
243.....43270
511.....43270
842.....43270
905.....43734
942.....43270
964.....44055
968.....44055

Proposed Rules:

575.....45278
888.....44198

25 CFR

Proposed Rules:

118.....43935

26 CFR

1.....43344, 45105, 45453, 45690, 46618–46620, 46651
4a.....43191
5f.....45461
31.....45107
35a.....45461
301.....47016
602.....45105, 45453, 45461, 45690, 46619, 46620, 46651

Proposed Rules:

1.....43218, 44315, 44568, 45131, 45484, 46688, 46689
4a.....43218
31.....45132
51.....44568, 47031
602.....45131, 46688, 46689

27 CFR

200.....45762
270.....43191
275.....43191
290.....43191
295.....43191
296.....43191

Proposed Rules:

5.....44924

28 CFR

58.....44287
544.....47178
551.....47178

Proposed Rules:

545.....47180

29 CFR

91.....45840
1910.....45654
1952.....44784
2509.....47226
2510.....47226
2550.....47226
2616.....44288
2617.....44288
2619.....45315
2621.....45317
2622.....47226
2623.....44288
2676.....44908

Proposed Rules:

1910.....44796, 45427
2613.....44798
2617.....44798
2619.....44798

30 CFR

210.....45881
216.....45881
913.....44454
915.....44600
920.....44786
934.....44289, 46654
950.....45082

Proposed Rules:

57.....45678
723.....46838
724.....46838
762.....44484
784.....44742
817.....44742
845.....46838
846.....46838
914.....44926
916.....44927
917.....46690
935.....46691
943.....43617

31 CFR

103.....45108
203.....46853
344.....47400
500.....44459
515.....44459
545.....46853

Proposed Rules:

357.....46692

32 CFR

76.....44462
199.....44601
292a.....44064, 45110
553.....43741
724.....44908
765.....45467
807.....43608
855.....47227

Proposed Rules:

169.....43619
169a.....43619
171.....43619
552.....44997
1602.....44485
1605.....44485
1621.....44485
1630.....44485
1633.....44485
1648.....44485
1656.....44485

33 CFR

117.....44909, 45318, 47018
162.....43742
165.....43906, 44603, 45764
166.....43347
209.....45765

Proposed Rules:

67.....44642
166.....44072, 46880
167.....44072

34 CFR

614.....46582
617.....46582
668.....43320, 43332
692.....43310

Proposed Rules:

760.....44800

35 CFR

103.....45883

37 CFR

201.....45110
304.....43609

38 CFR

21.....45766, 46654
36.....44290

39 CFR

10.....45318
111.....43194, 43907

Proposed Rules:

10.....43386
111.....43936, 44801, 45781, 45782

40 CFR

52.....43349, 43609, 43742, 44066, 44408, 44604, 44909, 45468, 45469, 45884, 45885, 46655, 47237, 47239
60.....43572, 44984, 46856
61.....44984, 46856
62.....44408
81.....44291, 45319, 45885
117.....45767
180.....44466–44469, 44605, 45113, 45114, 46658, 46662, 46665, 46857, 46858, 47240
261.....43350, 43712, 46668
271.....45320
302.....45767
430.....45232
431.....45232
439.....45094
455.....44911
761.....47241

Proposed Rules:

52.....43387–43394, 46692, 46693, 47032
60.....44075, 44643, 44803
62.....43395
81.....44081
167.....45132
180.....43495, 43643, 44487, 45133, 45134
260.....44714, 45783, 46824
261.....44714, 45485, 46984
262.....44714
264.....44714, 45783, 46824
265.....44714, 46824
268.....44714
270.....44418, 44714, 45783
271.....44714, 46824
414.....44082
416.....44082
704.....45486
763.....47265
799.....43397, 45487

41 CFR

101–20.....44258
101–40.....44984
114–52.....44469
201–1.....45887
201–2.....45887
201–23.....45887
201–24.....45887

42 CFR

57.....45767
400.....43195, 44985–44987
405.....43195
412.....43195
421.....43195
433.....45321
456.....43195
460.....43195
461.....43195
462.....43195
463.....43195
466.....43195
473.....43195
476.....43195
478.....43195

Proposed Rules:

57.....44408, 45000
405.....47266
455.....44490

43 CFR

301.....47353
302.....47353
303.....47353
304.....47353
305.....47353
306.....47353
307.....47353
313.....47353
314.....47353
315.....47353
316.....47353
319.....47353
322.....47353
325.....47353
330.....47353
332.....47353
353.....47353
2910.....45986
3100.....43910
3400.....43910
3470.....43910
3500.....43910

Proposed Rules:

4.....46846

Public Land Order:

6554.....43351
6625.....43267
6629.....45229
6633.....43351
6634.....44478
6635.....45330

44 CFR

64.....43198, 45116, 46858, 46860, 46862
81.....44911
302.....43923

Proposed Rules:

67.....44928, 45003

45 CFR

31 45117
95 45321
205 45321
307 45321
1180 43351
2010 47164

Proposed Rules:

301 43550
302 43550
303 43550
305 43550

46 CFR

515 46668

Proposed Rules:

150 ..... 44182, 46882
160 45783
202 44093
382 45135
560 46694
572 46694
580 ..... 43267, 45912

47 CFR

Ch. I 44478
0 45888
1 45888
2 44478
18 43744
25 44068
31 ..... 43498, 44479
32 43498
33 43498
43 45890
73 ..... 43199, 43200, 44069, 44478, 44988–44990, 45331, 45891, 46862
76 44606
97 45891

Proposed Rules:

1 45912
2 ..... 43749, 44093
15 46882
31 45915
32 45915
61 45912
68 43749
69 45912
73 44094
80 43749
90 45025
94 44093

48 CFR

Ch. 2 46052
Ch. 17 44296
204 43200
215 43200
222 43354
230 43200
232 43209
252 ..... 43209, 43354
253 43200
301 ..... 44292, 47353
302 ..... 44292, 47353
303 ..... 44292, 47353
304 ..... 44292, 47353
305 ..... 44292, 47353
306 ..... 44292, 47353
307 ..... 44292, 47353
313 ..... 44292, 47353
314 ..... 44292, 47353
315 ..... 44292, 47353
316 ..... 44292, 47353
319 ..... 44292, 47353
322 ..... 44292, 47353
325 ..... 44292, 47353
330 ..... 44292, 47353
332 ..... 44292, 47353
353 ..... 44292, 47353
501 45892
506 44990
509 45895
513 ..... 45892, 45895
514 ..... 45895, 45897
552 ..... 45892, 45897
553 ..... 45892, 45895
970 43924
1801 45769
1803 45769
1804 45769
1805 45769
1806 45769
1807 45769
1808 45769
1812 45769
1815 45769
1822 45769
1827 45769
1836 45769
1837 45769
1839 45769
1842 45769
1845 45769
1846 45769
1852 45769
1853 45769
5242 46670
5252 46670
PHS 315 ..... 43355, 45229
PHS 352 ..... 43355, 45229

Proposed Rules:

13 44410
48 43219
52 ..... 43219, 44410
203 43801
252 43801
951 46884
952 46884
970 46884
PHS 352 45141

49 CFR

171 ..... 44790, 46672
172 46672
173 46674
175 44790
225 47018
1001 44297
1002 44297
1003 44297
1008 44297
1011 44297
1039 ..... 45898, 46675
1041 44297
1049 44297
1080 44297
1083 44297
1084 44297
1090 44297
1105 44297
1132 44297
1160 ..... 43926, 44297
1165 43926
1181 44297
1220 44297
1312 ..... 44297, 45898
1313 45898
1320 44297
1330 44297
1331 44297

Proposed Rules:

71 43644
531 44492
571 ..... 43801, 44928
574 45916
1002 45348
1084 44318
1160 43937
1165 43937

50 CFR

17 45904–45907
23 44479
26 44791
36 ..... 44791, 45986
96 44791
372 43928
604 46675
652 44297
653 46675
663 43357
681 46863

Proposed Rules:

17 ..... 44808, 45923, 47033
97 44812
98 44812
99 44812
100 44812
101 44812
102 44812
103 44812
104 44812
105 44812
106 44812
107 44812
216 47156
222 43397
611 ..... 43397, 44812, 45141, 45349
646 43937
661 44007
663 43219
672 ..... 43397, 44812
675 ..... 43397, 43401, 45349
681 43940
684 46886
685 45141

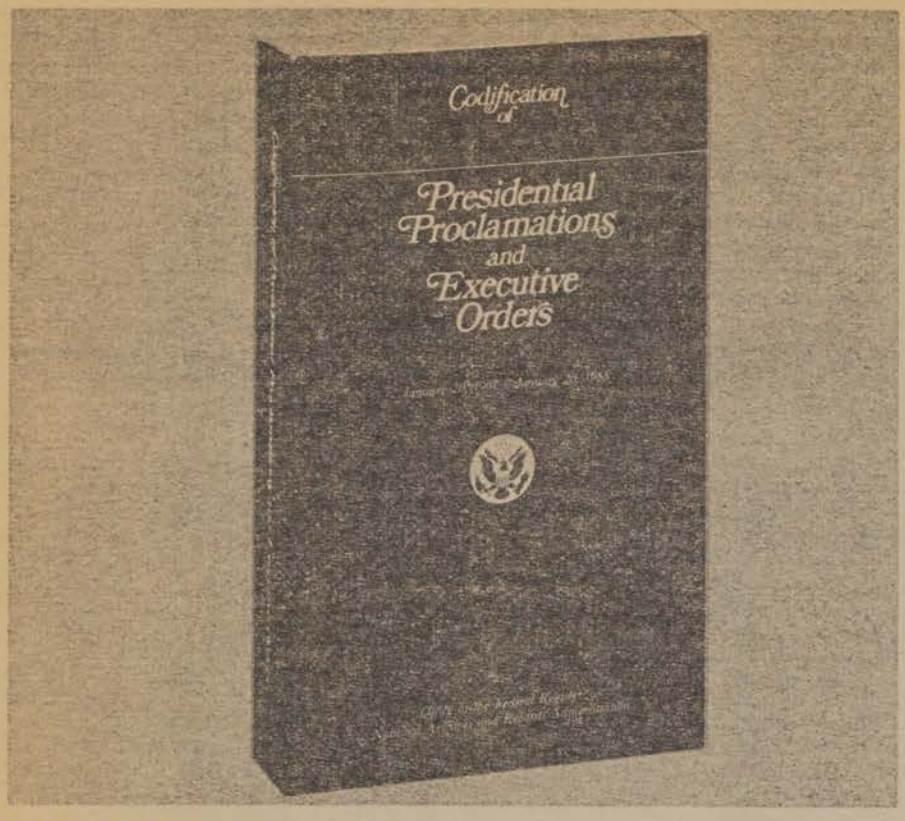
LIST OF PUBLIC LAWS

Note: The listing of public laws enacted during the second session of the 99th Congress has been completed.

Last listing: November 20, 1986.

The listing will be resumed when bills are enacted into public law during the first session of the 100th Congress which convenes on January 6, 1987.

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